(19,569.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 142.

THE SOUTHERN PACIFIC RAILROAD COMPANY, CENTRAL TRUST COMPANY OF NEW YORK, D. O. MILLS, AND HOMER S. KING AS TRUSTEES, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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United States Circuit Court of Appeals, for the Ninth Circuit.

SOUTHERN PACIFIC RAILROAD COMPANY, CENTRAL TRUST COMPANY OF NEW YORK, D. O. MILLS and HOMER S. KING, as Trustees,

Appellants,

vs.

THE UNITED STATES,

Appellee.

Order Extending Time to Docket Cause.

Good cause appearing therefor, it is hereby ordered that the time heretofore allowed said appellants to docket said cause and file the record thereof with the clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, be, and the same hereby is, enlarged and extended until and including the 10th day of January, 1904.

Dated at Los Angeles, California, October 2d, 1903.

OLIN WELLBORN,

United States District Judge for the Southern District of California.

[Endorsed]: No. 1045. United States Circuit Court of Appeals, for the Ninth Circuit. Southern Pacific Railroad Co. et al. vs. The United States. Order Extending Time to Docket Cause. Filed Oct. 3, 1903. F. D. Monckton, Clerk.

United States Circuit Court of Appeals, for the Ninth Circuit.

SOUTHERN PACIFIC RAILROAD COMPANY, the CENTRAL TRUST COMPANY OF NEW YORK, as Trustee, and D. O. MILLS and HOMER S. KING, as Trustees,
Appellants,

vs.

THE UNITED STATES,
Appellee.

Order Extending Time to Docket Cause.

Good cause appearing therefor, it is hereby ordered that the time heretofore allowed said appellants to docket said cause and file the record thereof with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same hereby is, enlarged and extended to and including the 10th day of February, 1904.

Dated at Los Angeles, California, December 31st, 1903.

ROSS,

United States Circuit Judge for the Ninth Circuit.

[Endorsed]: No. 1045. United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Railway Co. et al., vs. The United States of America. Order Extending Time to Docket Cause. Filed Jan. 2, 1904. F. D. Monckton, Clerk.

United States Circuit Court of Appeals, for the Ninth Circuit.

SOUTHERN PACIFIC RAILROAD COMPANY, the CENTRAL TRUST COMPANY OF NEW YORK, as Trustee, and D. O. MILLS and HOMER S. KING, as Trustees,
Appellants,

vs.

THE UNITED STATES,
Appellee.

Order Extending Time to Docket Cause.

Good cause appearing therefor, it is hereby ordered that the time heretofore allowed said appellant to docket said cause and file the record thereof with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same hereby is, enlarged and extended to and including the 10th day of March, 1904.

Dated at Los Angeles, California, February 4th, 1904.

OLIN WELLBORN,
United States District Judge for the Southern District of California.

[Endorsed]: No. 1045. United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Railroad Company et al., Appellants, vs. The United States of America, Appellee. Order Extending Time to Docket Cause. Filed Feb. 6, 1904. F. D. Monckton, Clerk.

Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

UNITED STATES,
Plaintiff,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.
No. 979.

Citation.

United States of America—ss.

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, on October 10th, 1903, pursuant to an appeal filed in the clerk's office of the United States Circuit Court, Ninth Circuit, Southern District of California, in case No. 979, wherein the United States is plaintiff and the Southern Pacific Railroad Company and others are defendants, to show cause, if any there be, why the decree rendered in said cause on July 13th, 1903, by the said United States Circuit Court against the defendants, Southern Pacific Railroad Company, Central Trust Company of New York, D. O. Mills and Homer S. King, as trustees, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand, at the city of Los Angeles, on September 11th, 1903.

OLIN WELLBORN,
Judge.

I received copy, and acknowledge service, of within citation on September 11th, 1903.

JOSEPH H. CALL,
Special United States Attorney.

[Endorsed]: No. 979. U. S. Circuit Court, 9th Circuit, Southern District of Cala., Southern Division. United States, vs. S. P. R. R. Co., et al. Citation. Filed Sep. 11, 1903. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Wm. Singer, Jr., N. E. cor. 2nd & Mission Sts., San Francisco, Cal., Atty. for Defts.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY and Others,
Respondents.
No. 979.

Bill of Complaint.

To the Honorable, the Judges of the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California:

The United States of America, by the Attorney Gen-

eral thereof, and by Frank P. Flint, United States Attorney for the Southern District of California, brings this, its bill, against the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California, and residing within said State; and the Central Trust Company of New York, as trustee, a corporation organized and existing under and by virtue of the laws of the State of New York; and D. O. Mills and Homer S. King, as trustees, residents and citizens of San Francisco, California; and Frank Walker, W. A. Choate, Granville Cox, J. P. Kyler, H. S. Button, William H. Davis, Walter A. Choate, Calvin Ogburn, William H. Houses, Emma S. C. West, Estate of Frank K. Hinman, D. W. Lewis, Riverside Vineyard Company, I. N. Van Nuys, Adam Wilhart, Charles H. Colwell, Russ Avery, Kate Bryant McVay and Ella A. Seares, each a citizen of the State of California, residing within the Southern District of said State; and thereupon your orator complains and alleges:

That by section 23 of the act of Congress, approved March 3d, 1871, entitled "An act to incorporate the Texas and Pacific Railroad Company, and to aid in the construction of its road, and for other purposes." The said Southern Pacific Railroad Company was thereby authorized to construct a line of railroad from a point at or near Tehachapi Pass by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants, and privileges, and subject to the same limitations, restraints, and condi-

tions as were granted to said Southern Pacific Railroad Company of California, by the act of Congress of July 27th, 1866.

That on the 3d day of April, 1871, said Southern Pacific Railroad Company duly accepted said act of Congress and on that day filed in the office of the Commissioner of the General Land Office its map of general route for a line of railroad from Tehachapi Pass, via Los Angeles to the Colorado River at Fort Yuma; and thereafter on the —— day of ———, 1874, constructed in a good, substantial and workmanlike manner its line of railroad from said Tehachapi Pass, via Los Angeles to Fort Yuma, upon the Colorado River, and, in that year, filed in sections its map of definite location of its said line of railroad, and filed the same in the office of the Commissioner of the General Land Office, and the tracts of land hereinafter described, and for which this suit is brought, were included within the twenty mile limits of the said line of route of said railroad company; and thereafter Commissioners appointed by the President examined and accepted said railroad as duly constructed in accordance with said act of Congress.

Your orator further alleges that on the 28th day of September, 1838, the Mexican government duly made and executed to one Bandini a grant for the tract of land known as "Jurupa," at present situated in the county of San Bernardino, in the Southern District of California, and which grant was duly confirmed to the said Bandini by the authorities of the government of Mexico, and judicial possession was given to said Bandini by the government of Mexico to the said tract on

December 4th, 1838; and the said tract of land so granted to said Bandini is described as follows, to wit: "Commencing at the foot of a small hill standing alone, at the cañada which the Messrs. Yorba recognize as their boundary, on the further side of the river Jurupa, which hill the Indians, in their tongue, call 'Pachappa,' which was taken for a landmark, placing on it certain stones on top of others; thence course westerly along the bank of said river thirty thousand varas to the point of the same table-land on which Mr. Bandini had established his house, and where the said river makes a bend, where a stake was driven for a landmark; thence northerly, fronting towards Cucamonga, seven thousand varas, passing between the two springs of Guapan, ending at the first white sand bank which there is on said course towards Cucamonga; thence easterly the same thirty thousand varas to a small lone mountain on the left hand of the high road going from San Gabriel to San Bernardino, called by the Indians 'Catamalcay,' and which was designated as a landmark; thence southerly seven thousand varas to the point of beginning at the foot of the small hill called 'Pachappa,' which makes a corner, east, west."

And your orator further alleges that the following described tracts of land were and are embraced within the boundaries of said grant so made by the government of Mexico to said Bandini, and was a part thereof, to wit: "Lots five (5), six (6), seven (7), eight (8), and nine (9), in section twenty-five (25), township one (1) south, range five (5) west, San Bernardino base and meridian; and

"Southeast quarter (SE. 1/4), of southeast quarter (SE. 1/4), and lots eight (8), nine (9), ten (10), and eleven (11), of section thirty-one (31), township one (1) south, range five (5) west, San Bernardino base and meridian; and

"Lots three (3), four (4), five (5), six (6), seven (7), eight (8), eleven (11), and twelve (12), and southeast quarter (SE. 1/4) of northeast quarter (NE. 1/4), northeast quarter (NE. 1/4), of southeast quarter (SE. 1/4), northhalf (N. 1/2) of southwest quarter (SW. 1/4), and southwest quarter (SW. 1/4) of southwest quarter (SW. 1/4), section thirty-three (33), township one (1) south, range five (5) west, San Bernardino base and meridian; and

"Lots one (1), two (2), and three (3), of section thirty-five (35), township one (1) south, range five (5) west, San Bernardino base and meridian; and

"Lots one (1), two (2), three (3), four (4), five (5), and six (6), of section five (5), township two (2) south, range six (6) west, San Bernardino base and meridian; and

"Southwest quarter (SW. 1/4) of section one (1), township two (2) south, range six (6) west, San Bernardino base and meridian; and

"Lots one (1), two (2), three (3), and four (4), and the south half (S. 1/2) of northwest quarter (NW. 1/4), and south half (S. 1/2) of northeast quarter (NE. 1/4), section one (1), township two (2) south, range six (6) west, San Bernardino base and meridian; and

"Lots one (1), three (3), seven (7), eight (8), nine (9), and ten (10), and the south half (S. 1/2) of southwest quarter (SW. 1/4), southwest quarter (SW. 1/4), of south-

east quarter (SE. 1/4), and northhalf (N. 1/2) of southeast quarter (SE. 1/4), section nine (9), township two (2) south, range six (6) west, San Bernardino base and meridian; and

"Lots one (1), two (2), and northwest quarter (NW. 1/4) of southeast quarter (SE. 1/4), section one (1), township two (2), south, range six (6) west, San Bernardino base and meridian; and

"Lots one (1), two (2), three (3), four (4), five (5), and seven (7), and northhalf (N. 1/2) of northeast quarter (NE. 1/4), and southhalf (S. 1/2) of northwest quarter (NW. 1/4), section seventeen (17), township two (2) south, range six (6) west, San Bernardino base and meridian; and

"Lot one (1), of section nineteen (19), township two south (2) south, range six (6) west, San Bernardino base and meridian."

Your orator further alleges that on the —— day of of September, 1852, said Bandini filed his petition and claim for said land with the Board of Land Commissioners appointed and constituted pursuant to the act of Congress of March 3d, 1851, entitled "An act to ascertain and settle the private land claims in the state of California"; and on the 17th day of October, 1854, the said Board of Land Commissioners made and filed their decree confirming the grant of said Bandini, in accordance with the description of said tract contained in the said grant as aforesaid.

Your orator further alleges that in pursuance of the act of Congress of July 2, 1864 (13 U. S. Stat. 356), the

Surveyor General of the United States for the District of California surveyed the said grant of the tract of land known as Jurupa confirmed to said Bandini for the purpose of enabling the United States to patent said land so confirmed to said Bandini; and that said survey was made and approved by the United States Surveyor General for California on the 26th day of February, 1872; at which time the plat and field-notes of said survey, as so approved, was duly filed in the office of the United States Surveyor General for the District of California and in the office of the Commissioner of the General Land Office and so remained as a valid and subsisting segregation and reservation of the land embraced thereby, until the 21st day of February, 1877, when the said survey was disapproved by the Secretary of the Interior and a new survey of the said grant was then ordered. That the survey of said grant so made and approved on February 26, 1872, embraced within the boundaries of said grant the several tracts of land hereinbefore described and for which this suit is brought.

Your orator further alleges that in November, 1878, a new survey was made of said rancho Jurupa by the United States Surveyor General for the District of California, which was approved by the Department of the Interior and a patent in due form of law was issued by the United States to said Bandini and to his heirs and assigns, on the 23d day of May, 1879, who accepted said patent in full satisfaction of said Jurupa grant; but which said patent and final survey did not include

any of the lands hereinbefore described and for which this suit is brought.

Your orator further alleges that at the time of the passage of said act of Congress of March 3, 1871, and at the time the said Southern Pacific Railroad Company filed its map of definite location of its said line of railroad, the said tracts of land hereinbefore described were sub judice, and were excepted out of and reserved from any grant to said company, and are still owned by your orator.

Your orator further alleges that on the —— day of ————, 1894, the Commissioner of the General Land Office and the Secretary of the Interior, without any authority so to do, and erroneously, caused letters patent to be issued by the United States to the Southern Pacific Railroad Company, for the tracts of land hereinbefore described, embraced in said Jurupa grant, but excluded therefrom upon patent.

Your orator further alleges that thereafter and on the 20th day of November, 1900, the Secretary of the Interior having investigated the matter and having determined that said patents for said land were issued to said railroad company without authority and erroneously, demanded in writing of the said Southern Pacific Railroad Company a reconveyance and relinquishment to the United States of the said tracts of land so erroneously patented, which demand was refused by said company and not complied with.

Your orator further alleges that all of the defendants hereinbefore named other than said Southern Pacific Railroad Company claim an interest in the said lands

above described, under said Southern Pacific Railroad Company, by virtue of said act of Congress of March 3d, 1871, and not otherwise, the nature and extent of which claims are unknown to your orator, and your orator requires the said defendants to set forth the nature and extent of their claims to said lands, and of any interest therein.

Wherefore, your orator prays that said patents of the United States to said Southern Pacific Railroad Company hereinbefore described be canceled, annulled, and vacated, and that the title of the United States to the said land be quieted; and in case it shall appear that said lands or any of them have been sold by said Company to bona fide purchasers, your orator prays that it may have and recover a given price for said lands in accordance with the acts of Congress of March 3, 1887, and March 2, 1886; and your orator prays for such other and further relief as to the Court may seem equitable, and for costs of suit.

May it please your Honors to grant unto your orator a writ of subpoena to be issued under the seal of this Honorable Court directed to the Southern Pacific Railroad Company, the Central Trust Company of New York, as Trustee, D. O. Mills, and Homer S. King, as Trustees; Frank Walker, W. A. Choate, Grandville Cox, J. P. Kyler, H. S. Button, William H. Davis, Walter A. Choate, Calvin Ogburn, William H. Houses, Emma S. C. West, Estate of Frank K. Hinman, D. W. Lewis, Riverside Vineyard Company, I. N. Van Nuys, Adam Wilhart, Charles H. Colwell, Russ Avery, Kate Bryant McVay, and Ella A. Seares, commanding them upon a certain

day and under a certain penalty to be therein inserted to appear before your Honors and answer the premises, and to stand to and abide such further order and decree therein as may to the Court seem meet.

Your orator waives answer under oath.

JOHN W. GRIGGS,
Attorney General.
FRANK P. FLINT,
United States Attorney for the Southern District of California.

[Endorsed]: No. 979. U. S. Circuit Court, Southern District of California, Southern Division. United States of America vs. Southern Pacific Railroad Company et al. Bill of Complaint. Filed Feb. 28, 1901. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

IN EQUITY.

Subpoena ad Respondendum.

The President of the United States of America, Greeting, to the Southern Pacific Railroad Company, the Central Trust Company of New York, as Trustee, D. O. Mills, and Homer S. King, as Trustees, Frank Walker, W. A. Choate, Granville Cox, J. P. Kyler, H. S. Button, William H. Davis, Walter A. Choate, Calvin Ogburn, William H. Houses, Emma S. C. West, Estate of Frank K. Hinman, D. W. Lewis,

Riverside Vineyard Company, I. N. Van Nuys, Adam Wilhart, Charles H. Colwell, Russ Avery, Kate Bryant McVay and Ella A. Seares:

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in Los Angeles, on the first day of April, A. D. 1901, to answer a bill of complaint exhibited against you in said court by the United States of America, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 28th day of February, in the year of our Lord one thousand nine hundred and one, and of our Independence the one hundred and twenty-fifth.

[Seal] WM. M. VAN DYKE,
Clerk.
By Chas. N. Williams,
Deputy Clerk.

Memorandum Pursuant to Rule 12, Supreme Court, U. S.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of April next, at the clerk's office of said Court pursuant to said bill; otherwise the said bill will be taken pro confesso.

WM. M. VAN DYKE,
Clerk.
By Chas. N. Williams,
Deputy Clerk.

Clerk's Office: Los Angeles, California.

United States Marshal's Office,
Northern District of California.

I hereby certify, that I received the within writ on the 18th day of March, 1901, and personally served the same on the 18th day of March, 1901, on the Southern Pacific Railroad Company by delivering to and leaving with J. L. Willcutt, secretary of the Southern Pacific Railroad Company, one of said defendants named therein, personally, at the county of San Francisco in said District, a certified copy thereof.

San Francisco, March 18th, 1901.

JOHN H. SHINE,
U. S. Marshal.
By Geo. H. Burnham,
Office Deputy.

Office of the U. S. Marshal,
Southern District of Cal.

I hereby certify that I received the within writ on the 1st day of March, 1901, and personally served the same on Frank Walker, J. P. Kyler, H. S. Button, William H. Davis, Calvin Ogburn, Emma S. C. West, Estate of Frank K. Hinman, D. W. Lewis, Riverside Vineyard Company, I. N. Van Nuys, Charles H. Colwell, and Russ Avery, by delivering to and leaving with Frank Walker, on Mar. 13th, 1901, J. P. Kyler, on Mar. 11th, 1901, H. S. Button, William H. Davis, D. W. Lewis and Mrs. C. W. Hightower, an adult member of the family of Calvin Ogburn, and at the residence of Calvin Ogburn, on Mar.

6th, 1901, Emma S. C. West, J. C. West, administrator of the Estate of Frank K. Hinman, on Mar. 7th, 1901, I. N. Van Nuys, Alfred Sterns, Secretary of the Riverside Vineyard Company, Mrs. Charles H. Colwell, an adult member of the family of Charles H. Colwell and at the residence of Charles H. Colwell, and Russ Avery, on Mar. 8th, 1901, the said defendants named therein personally, at the counties of Los Angeles, Riverside and Ventura, in the said district, a certified copy thereof.

Los Angeles, Cal., Mar. 19, 1901.

H. Z. OSBORNE,
U. S. Marshal.
By G. F. McCulloch,
Deputy.

Office of the U. S. Marshal,
Southern Dist. of California.

I hereby certify that I received the within writ on the 16th day of March, 1901, and personally served the same on the 16th day of March, 1901, on W. A. Choate, by delivering to and leaving with W. A. Choate, one of the said defendants named therein, personally, at his residence at Santa Ana in the county of Orange, in the said district, a certified copy thereof.

Los Angeles, Cal., Mar. 19, 1901.

H. Z. OSBORNE,
U. S. Marshal.

[Endorsed]: Marshal's Doc. No. 378. Original. No. 979. U. S. Circuit Court, Ninth Circuit, Southern Dis-

trict of California, Southern Division. In Equity. The United States of America vs. The Southern Pacific Railroad Company et al. Subpoena. N. D. of Cala. Marshal's Docket No. 1898. Filed Mar. 19, 1901. Wm. M. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Respondents.

Order Directing Absent Defendants to Appear.

It appearing from an affidavit of Frank P. Flint, this day filed in said cause, that he is the United States Attorney for the Southern District of California, and the solicitor for complainant in the above-entitled action; that the bill of complaint in said suit was duly filed with the clerk of this court on the 28th day of February, 1901, and subpoena thereupon issued; that the said action is brought for the purpose of canceling patent to certain lands within the Southern District of California, described in the bill of complaint herein, and to quiet the title of the United States to said lands, and to recover the purchase price of any of said lands that may have been sold by the said Southern Pacific Railroad

Company to bona fide purchasers; that the Central Trust Company of New York, as trustee, D. O. Mills and Homer S. King, as trustees, respondents named in said bill of complaint, are neither of them inhabitants of this district, nor can any of them be found within said district; that the said respondents are necessary and proper parties herein; that personal service of the supoena issued herein cannot be made on said respondents—

Now, therefore, on application of Frank P. Flint, United States Attorney for the Southern District of California, and solicitor for the complainant, it is ordered that said Central Trust Company, as trustee, D. O. Mills and Homer S. King, as trustees, be, and they are hereby directed to appear and demur, plead or answer in this court, in the city of Los Angeles, state of California, on or before the 1st day of May, A. D. 1901, and in default thereof that this cause may proceed to trial and final decree in the same manner as if said respondents had been duly served therein.

And it is further ordered that a copy of this order, certified by the clerk of this court shall be published in the Times Mirror, a newspaper printed and published in the city of Los Angeles, county of Los Angeles, State of California, once a week for six consecutive weeks, between the date of this order and the 1st day of May, A. D. 1901.

Done in Chambers this 1st day of March, 1901.

OLIN WELLBORN,

Judge.

[Endorsed]: No. 979. U. S. Circuit Court, Southern District of California, Southern Division. United States of America vs. Southern Pacific Railroad Company et al. Order Directing Absent Defendants to Appear. Filed Mar. 1, 1901. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Respondents.
No. 979.

Answer of I. N. Van Nuys.

The respondent, I. N. Van Nuys, now and at all times hereafter reserving all manner of benefit and advantage to himself of exception to the many errors and insufficiencies in said bill contained, for answer to the bill of complaint herein, or unto so much or such parts thereof as this respondent is advised is material for him to make answer unto, answers and says:

I.

He admits that he claims an interest in all of that portion of the lands described in the bill of complaint herein described as follows, to wit: Lots one (1), three

(3), seven (7), eight (8), nine (9), and ten (10); and the south half (S. 1/2) of southwest quarter (SW. 1/4), southwest quarter (SW. 1/4) of southeast quarter (SE. 1/4), and north half (N. 1/2) of southeast quarter (SE. 1/4) of section 9, township 2 south, range 6 west, San Bernardino base and meridian; and as to all the other of said lands described in the said bill of complaint he disclaims any right, title or interest in the same, or any part thereof; and as to the said portions of said section 9, above described, he admits that he claims an interest therein, and claims to own the same in fee, under the said Southern Pacific Railroad Company, by virtue of said act of Congress of March 3, 1871, mentioned in said bill of complaint, and not otherwise.

II.

He admits that by section 23 of the act of Congress approved March 3, 1871, entitled, "An act to incorporate the Texas and Pacific Railroad Company and to aid in the construction of its road, and for other purposes," the said Southern Pacific Railroad Company was thereby authorized to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restraints and conditions, as were granted to said Southern Pacific Railroad Company of California by the act of July 7, 1866.

III.

He admits that on the 3d day of April, 1871, said

Southern Pacific Railroad Company duly accepted said act of Congress and on that day filed in the office of the Commissioner of the General Land Office its map of general route for a line of railroad from Tehachapi Pass, via Los Angeles, to the Colorado River and Fort Yuma, and thereafter, on the —— day of ————, 1874, constructed in a good, substantial and workmanlike manner its line of railroad from said Tehachapi Pass, via Los Angeles, to Fort Yuma, upon the Colorado River, and in that year finished in sections its map of definite location of its said line of railroad and filed the same in the office of the Commissioner of the General Land Office; and that the tracts of land in the bill of complaint herein described and for which this suit is brought, were included within the twenty mile limits of the said line of route of said railroad company; and thereafter commissioners appointed by the President examined and accepted said railroad as duly constructed in accordance with said act of Congress.

IV.

He further admits that on the 28th day of September, 1838, the Mexican Government duly made and executed to one Bandini a grant for the tract of land known as Jurupa, at present situated in the county of Riverside, formerly in the county of San Bernardino, in the Southern District of California, and which grant was duly confirmed to the said Bandini by the authorities of the Government of Mexico, and juridical possession was given to the said Bandini by the Government of Mexico to the said tract on December 4, 1838; admits

that the said tract of land so granted to said Bandini is described as follows, to wit:

"Commencing at the foot of a small hill, standing alone; at the cañada which the Messrs. Yorba recognize as their boundary, on the further side of the river Jurupa, which hill the Indians, in their tongue, call 'Pachappa,' which was taken for a landmark, placing on it certain stones on top of others; thence course westerly along the bank of said river thirty thousand varas to the point of the same table-land on which Mr. Bandini had established his house and where the said river makes a bend, where a stake was driven for a landmark; thence northerly fronting towards Cucamonga, seven thousand varas, passing between the two springs of Guapan, ending at the first white sand bank which there is on said course towards Cucamonga; thence easterly the same thirty thousand varas to a small lone mountain on the left-hand of the high road going from San Gabriel to San Bernardino, called by the Indians 'Catamalcay,' and which was designated as a landmark; thence southerly seven thousand varas to the point of beginning at the foot of the small hill called 'Pachappa,' which makes a corner, east, west."

VI.

Admits that those portions of said section 9, township 2 south, range 6 west, hereinbefore described, and claimed by this respondent, were and are embraced within the boundaries of said grant so made by the Government of Mexico to said Bandini, and were a part thereof; that said Bandini filed his petition and

claim for said land with the Board of Land Commissioners appointed and constituted pursuant to an act of Congress of March 3, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," and, on the 17th day of October, 1854, the said Board of Land Commissioners made and filed their decree confirming the grant of said Bandini, in accordance with the descriptions of said tract contained in the said grant as aforesaid; that in pursuance of the act of Congress of July 2, 1864, the Surveyor General of the United States for the District of California, surveyed the said grant of the tract of land known as Jurupa, confirmed to said Bandini, for the purpose of enabling the United States to patent said land so confirmed to said Bandini; and that said survey was made and approved by the United States Surveyor General forCalifornia on the 26th day of February, 1872, and that at that time the plat and field-notes of said survey as so approved were duly filed in the office of the United States Surveyor General for the District of California, and in the office of the Commissioner of the General Land Office, and so remained as a valid and subsisting segregation and reservation of the land embraced therein until the 21st day of February, 1877, when the said survey was disapproved by the Secretary of the Interior, and a new survey of the said grant was then ordered; and admits that the survey of the said grant so made and approved on February 26, 1872, embraced within the boundaries of said grant those portions of said section 9, township 2 south, range 6 west, San Bernardino meridian, and hereinbefore described as owned by this respondent.

VII.

Respondent further admits that in November, 1873, a new survey was made of said Rancho Jurupa by the United States Surveyor General for the District of California, which was approved by the Department of the Interior, and a patent in due form of law was issued by the United States to said Bandini, and to his heirs and assigns, on the 23d day of May, 1879, who accepted said patent in full satisfaction of said Jurupa grant, and admits that said patent and final survey do not include any portion of said section 9, township 2 south, range 6 west, San Bernardino base and meridian, claimed by this respondent, and for which this suit is brought. Respondent admits that, at the time of the passage of said act of Congress of March 3, 1871, and at the time the said Southern Pacific Railroad Company filed its map of definite location of its said line of railroad, those portions of said section 9, township 2 south, range 6 west, hereinbefore described as claimed by this respondent, were sub judice, and were excepted out of and reserved from any grant to said company, and are still owned by the complainant herein.

VIII.

This respondent denies that on the —— day of ————, 1894, the Commissioner of the General Land Office and the Secretary of the Interior, without any right to do so, or erroneously, or at all, caused letters patent to be issued by the United States to the Southern Pacific Railroad Company for that portion of said section 9, township 2 south, range 6 west, San Ber-

nardino base and meridian, claimed by this respondent, or any portion thereof, embraced in said Jurupa Grant, but excluded therefrom upon patent.

IX.

This respondent admits that on the 20th day of November, 1900, the Secretary of the Interior demanded in writing of the said Southern Pacific Railroad Company a reconveyance and relinquishment to the United States of the said tracts of land described in the bill of complaint herein, and that said demand was refused by said company, and not complied with.

And for further answer to the said bill of complaint this respondent alleges:

I.

That on the 9th day of October, 1895, and not on the —— day of ————, 1894, as alleged in the bill of complaint herein, the Government of the United States, by its properly constituted authorities, issued to the Southern Pacific Railroad Company of California, a corporation, a patent purporting to convey to it, in fee simple, the title of said government to all that certain real property particularly described as follows, to wit:

Lots one (1), three (3), seven (7), eight (8), nine (9), and ten (10); and the south half (S. 1/2) of southwest quarter (S. W. 1/4), southwest quarter (S. W. 1/4) of southeast quarter (S. E. 1/4), and north half (N. 1/2) of southeast quarter (S. E. 1/4), of section 9, township 2 south, range 6 west, San Bernardino base and meridian; and being the same portions of said section 9 described in the bill of complaint herein; that said patent was there-

upon recorded in book ——, page ——, of Patents, in the office of the Recorder of San Bernardino County, State of California, in which county at said date the said section 9 was situated, the same now, however, being situated in and being a portion of the county of Riverside, State of California.

II.

That on the first day of February, 1889, the said Southern Pacific Railroad Company sold those portions of said section 9, hereinbefore specifically described by its deed of that date, to A. G. Patton, for the sum of of $1920.00, that being the full value thereof, which said deed was recorded in book 51, of Deeds, page 110, in the office of the recorder of San Bernardino County, State of California, and that the said Patton purchased said land in good faith, for a valuable consideration, relying upon the validity of said patent and believing that he was acquiring the unencumbered title thereto by said purchase, and that thereupon said Patton entered upon the possession of said premises, erected improvements thereon consisting of houses, barns and fences, and proceeded to cultivate said land and continued to cultivate the same continuously up to the time that he conveyed the same to this respondent as hereinafter set out.

III.

That, on the 24th day of July, 1899, the said A. G. Patton, by his deed conveyed said portions of said section 9, township 2 south, range 6 west, hereinbefore described as owned by this respondent, to this respond-

ent, by deed recorded July 26, 1899, in book 83, page 58, of Deeds, in the office of the recorder of Riverside County, State of California; and that this respondent in making said purchase, purchased the said land in good faith, and for value, and relied upon the validity of the said patent, and without any notice that the Government claimed that the said land had been illegally or erroneously patented to the Southern Pacific Railroad Company, as alleged in said bill; and this respondent further alleges that, under the act of Congress of March 2, 1896, entitled "An act to provide for the extension of the time within which suits may be brought to annul land patents, and other purposes" (29th Stats. 42), supplementing the act of Congress of March 3, 1887, entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes" (24th Stats. 556), the title of this respondent to said portions of said section 9, hereinbefore described was confirmed, and no suit can be maintained by the complainant herein to disturb the title of this respondent thereto.

IV.

That ever since the conveyance of said land by the said railroad company to the said Patton, to wit, since February 1, 1889, this respondent and his predecessor in interest have been in the open, notorious, exclusive and continuous possession of said land, claiming to be the owners of the same under said patent so issued to said railroad company, against the complainant here-

in and all the world; and during said time have paid all of the taxes, of every kind, nature and description, levied upon said premises.

All of which matters and things this respondent is ready to aver and prove as this Court shall direct, and prays that it be declared by the judgment of this Court that the title of this respondent to lots 1, 3, 7, 8, 9, and 10; and the south half of the southwest quarter; the southwest quarter of the southeast quarter, and the north half of the southeast quarter of section 9, township 2 south, range 6 west, San Bernardino base and meridian, is good and valid, and that the same was confirmed by said acts of Congress hereinbefore mentioned; and that this respondent be awarded his costs herein most wrongfully sustained.

GRAVES, O'MELVENY & SHANKLAND,
Solicitors for Respondent.

[Endorsed]: Original. No. 979. In the United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division. The United States of America, Complainant, vs. Southern Pacific Railroad Co. et al., Defendants. Answer of Respondent I. N. Van Nuys. Received copy of the within, this 18th day of March, 1901. James R. Finlayson, Asst. U. S. Attorney for Plaintiff. Filed Mar. 18, 1901. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Graves, O'Melveny & Shankland, Attorneys for Respondent.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA, Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY et al., Respondents.

No. 979.

Answer of Riverside Vineyard Company.

The respondent, the Riverside Vineyard Company, a corporation, now and at all times hereafter reserving all manner of benefit and advantage to itself of exception to the many errors and insufficiencies in said bill contained, for answer to the bill of complaint herein, or unto so much or such parts thereof as this respondent is advised is material for it to make answer unto, answers and says:

I.

That at the time of the commencement of this action this respondent was and ever since has been, and now is, a corporation duly incorporated under the laws of the State of California, having its office and principal place of business in the city of Los Angeles, county of Los Angeles, State of California.

II.

It admits that it claims an interest in that portion of the lands described in the bill of complaint as follows, to wit:

All of section 5, township 2 south, range 6 west, San Bernardino base and meridian.

And as to all the other of said lands described in the said bill of complaint, it disclaims any right, title or interest in the same, or any part thereof, and as to the said section 5, said respondent admits that it claims to own the said lands under the said Southern Pacific Railroad Company, by virtue of said act of Congress of March 3, 1871, mentioned in said bill of complaint, and not otherwise. But as to said section 5, described in said bill of complaint, this respondent denies that the same is properly described in said bill of complaint wherein the same is described as follows, to wit:

"Lots one (1), two (2), three (3), four (4), five (5), and six (6), of section 5, township 2 south, range 6 west, San Bernardino base and meridian"; and this respondent alleges that no such division of said section ever was made, but that the true subdivision of said section is as follows: The southeast quarter, containing 160 acres of land, the southwest quarter, containing 160 acres of land, lot two (2), containing 86.01 acres of land. lot two (2), containing 87.07 acres of land, lot one (1), containing 80 acres of land, and lot one (1), containing 80 acres of land, the four lots comprising the fractional north half of said section; the entire section comprising 653.08 acres of land.

III.

It admits that by section 23 of the act of Congress approved March 3, 1871, entitled "An act to incorporate the Texas and Pacific Railroad Company and to aid in

the construction of its road, and for other purposes," the said Southern Pacific Railroad Company was thereby authorized to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific railroad at or near the Colorado River, with the same rights, grants and privileges and subject to the same limitations, restraints and conditions, as were granted to said Southern Pacific Railroad Company of California by the act of July 7, 1866.

IV.

It admits that on the 3d day of April, 1871, said Southern Pacific Railroad Company duly accepted said act of Congress and on that day filed in the office of the Commissioner of the General Land Office its map of general route for a line of railroad from Tehachapi Pass, via Los Angeles, to the Colorado River and Fort Yuma, and thereafter, on the —— day of ————, 1874, constructed in a good, substantial and workmanlike manner its line of railroad from said Tehachapi Pass, via Los Angeles, to Fort Yuma upon the Colorado River, and in that year finished in sections its map of definite location of its said line of railroad, and filed the same in the office of the Commissioner of the General Land Office; and that the tracts of land in the bill of complaint herein described and for which this suit is brought, were included within the twenty mile limits of the said line of route of said railroad company; and thereafter commissioners appointed by the President examined and accepted said railroad as duly constructed in accordance with said act of Congress.

V.

It further admits that on the 28th day of September, 1838, the Mexican Government duly made and executed to one Bandini a grant for the tract of land known as Jurupa, at present situated in the county of Riverside, formerly in the county of San Bernardino, in the Southern District of California, and which grant was duly confirmed to the said Bandini by the authorities of the government of Mexico and juridical possession was given to the said Bandini by the government of Mexico to the said tract on December 4, 1838; admits that the said tract of land so granted to said Bandini is described as follows, to wit:

"Commencing at the foot of a small hill, standing alone, at the cañada which the Messrs. Yorba recognize as their boundary, on the further side of the river Jurupa, which hill the Indians, in their tongue, call 'Pachappa,' which was taken for a landmark, placing on it certain stones on top of others; thence course westerly along the bank of said river thirty thousand varas to the point of the same table-land on which Mr. Bandini had established his house and where the said river makes a bend where a stake was driven for a landmark; thence northerly, fronting towards Cucamonga, seven thousand varas, passing between the two springs of Guapan, ending at the first white sand bank which there is on said course towards Cucamonga; thence easterly the same thirty thousand varas to a small lone mountain on the left-hand of the high road going from San Gabriel to San Bernardino, called by the Indians

'Catamalcay,' and which was designated as a landmark; thence southerly seven thousand varas to the point of beginning at the foot of the small hill called 'Pachappa,' which makes a corner, east, west"; that said Bandini applied for confirmation of said grant, as alleged in said bill of complaint.

VI.

It denies that the land claimed by this respondent, to wit, section 5, of township 2, south, range 6 west, San Bernardino base and meridian, was or is embraced within the boundaries of said grant, so made by the government of Mexico to said Bandini, or that the same was a part thereof; and this respondent alleges that said section 5 is more than one mile distant from any boundary of said grant, or any line ever claimed to be the boundary of said grant.

VII.

It admits that in pursuance of an act of Congress of July 2, 1864, a survey of the said grant was made and approved by the United States Surveyor General for California, on the 26th day of February, 1872, and that at that time the plat and field-notes of said survey as so approved were duly filed in the office of the United States Surveyor General for the District of California, and in the office of the Commissioner of the General Land Office, and so remained as a valid and subsisting segregation and reservation of the land embraced therein until the 21st day of February, 1877, when the said survey was disapproved by the Secretary of the Interior and a new survey of the said grant was then ordered;

but denies that the survey of the said grant so made and approved on February 26, 1872, embraced, or ever embraced, within the boundaries of said grant the said section 5, township 2 south, range 6 west, San Bernardino base and meridian claimed by this respondent.

VIII.

Respondent further admits that in November, 1878, a new survey was made of said Rancho Jurupa by the United States Surveyor General for the District of California, which was approved by the Department of the Interior, and a patent in due form of law was issued by the United States to said Bandini and to his heirs and assigns on the 23d day of May, 1879, who accepted said patent in full satisfaction of said Jurupa grant; and admits that said patent and final survey do not include any portion of the said section 5, township 2 south, range 6 west, San Bernardino base and meridian, claimed by this respondent, and for which this suit is brought; but this respondent denies that the former survey hereinbefore alluded to, made of said grant, or any survey ever made thereof, ever did include said section 5. This respondent denies that at the time of the passage of said act of Congress of March 3, 1871, or at the time the said Southern Pacific Railroad Company filed its map of definite location of its said line of railroad, the said section 5, township 2 south, range 6 west, S. B M. hereinbefore described as claimed by this respondent, was sub judice or that it ever was sub judice or that it ever was excepted out of or reserved

from said grant, or any grant, to said company, and denies that said land is still owned by the complainant herein.

IX.

Respondent denies that on the —— day of ————, 1894, the Commissioner of the General Land Office and the Secretary of the Interior, without any authority so to do, or erroneously, or either, caused letters patent to be issued by the United States to the Southern Pacific Railroad Company for that portion of the land in said bill of complaint described claimed by this respondent, to wit, said section 5, township 2 south, range 6 west, S. B. M., and denies that said section 5 was embraced in said Jurupa Grant, or that the same was excluded therefrom upon patent; and this respondent further denies that any patent for said section 5 was issued by the Commissioner of the General Land Office and the Secretary of the Interior, or either of them at any time during the year 1894; but, on the other hand, this respondent alleges that, on the 7th day of October, 1891, the United States Government, by its duly authorized officers, duly issued its patent to the said Southern Pacific Railroad Company of California, a corporation, conveying to it said section 5, township 2 south, range 6 west, San Bernardino base and meridian now owned by this respondent, and that the issuance of said patent was in pursuance of section 23 of the act of Congress of March 3, 1871, and that, at the time of the issuance thereof the said Southern Pacific Railroad Company was entitled to receive said patent, hav-

ing earned the same under the terms of said act, and that the said patent was in all respects regularly issued, and vested in said railroad company the title of the United States Government to said section 5, township 2 south, range 6 west, San Bernardino base and meridian, absolutely and free and clear of any claim of the Government of the United States.

X.

This respondent admits that on the 20th day of November, 1900, the Secretary of the Interior demanded in writing of the said Southern Pacific Railroad Company, a reconveyance and relinquishment to the United States of the said tracts of land described in the bill of complaint herein, and that said demand was refused by said company, and not complied with; but this respondent denies that the said patent for said section 5, township 2 south, range 6 west, San Bernardino base and meridian, was issued to said railroad company without authority, or erroneously, or either, or that said land was erroneously patented to said railroad company by the United States Government.

And for further answer to the said bill of complaint this respondent alleges:

I.

That at the time of the commencement of this action this respondent was, and ever since has been, and now is, a corporation duly incorporated under the laws of the State of California, having its office and principal place of business in the city of Los Angeles, county

of Los Angeles, State of California; and that, prior to the commencement of this action it had filed in the office of the county clerk of Riverside County a certified copy of its articles of incorporation, showing the filing of the original articles in the office of the county clerk of Los Angeles County, and a certified copy thereof in the office of the Secretary of State of the State of California.

II.

That on the 7th day of October, 1891, the Government of the United States, by its properly constituted authorities, duly and regularly issued to the Southern Pacific Railroad Company of California, a corporation, a patent, conveying to it in fee simple the title of said government to all of section 5, township 2 south, range 6 west, San Bernardino base and meridian, containing 653.08 acres of land, and being a portion of the property described in the bill of complaint herein. That the said land never was embraced within any boundaries of the Jurupa or any other Mexican grant, but was included within the twenty mile limits of the line of route of the Southern Pacific Railroad Company fixed and settled as in the manner in the bill of complaint herein set out, and that, at the time of the issuance of said patent, the said Southern Pacific Railroad Company had earned the same under section 23 of the act of Congress, approved March 23, 1871, mentioned in the bill of complaint herein, and that thereupon said patent was, on November 30, 1891, recorded in book "D" of Patents, page 53, in the office of the recorder of

San Bernardino County, State of California, in which county, at said date, the said section 5 was situated, the same now, however, being situated in and being a portion of the county of Riverside, State of California.

III.

That on the 28th day of November, 1899, by proper mesne conveyances, this respondent acquired the title in fee simple absolute to said section 5, township 2 south, range 6 west, San Bernardino base and meridian, and ever since has been and now is the owner thereof, entitled thereto, and in possession of the same.

IV.

That the said land was, on the 2d day of December, 1891, by the said Southern Pacific Railroad Company, sold to A. J. Stalder and J. M. Clyman, for the sum of $2,612.32, and that the said grantees of said company purchased the same for the full value thereof, and in good faith, relying upon the validity of said patent, and believing that they were acquiring the unencumbered title to said premises by such purchase; that thereupon the said Stalder and Clyman entered into possession of said premises, erected improvements thereon consisting of houses, barns, and fences, and planted a vineyard on a portion of said land, and have paid all of the taxes levied upon said land, and occupied the same continuously until the second day of November, 1899, when the said J. M. Clyman sold his undivided one-half interest therein to the said A. J. Stalder, who subsequently conveyed his title to said land, for a valuable considera-

tion, to this respondent; and that this respondent is a purchaser of said land in good faith, and for value, and in making such purchase relied upon the validity of said patent, and without any notice that the said Government claimed that the said land had been illegally or erroneously patented; and that, even if said land had been erroneously patented to the said Southern Pacific Railroad Company, as alleged in said bill (which fact this respondent at all times denies), under the act of Congress of March 2d, 1896, entitled "An act to provide for the extension of the time within which suits may be brought to annul land patents, and other purposes" (29th Stats., 42), supplementing the act of Congress of March 3, 1887, entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for forfeiture of unearned lands, and for other purposes," the title of this respondent to said land was confirmed, and no suit can be maintained by the complainant herein to disturb the title of this respondent thereto.

V.

That ever since the conveyance of said land by said railroad to the said Stalder and Clyman, to wit, since the 2d day of December, 1891, this respondent and his predecessors in interest have been in the open, notorious, exclusive and continuous possession of said land, claiming to be the owners of the same under said patent so issued to said railroad company, against the plaintiff herein and all the world; and during said time

have paid all of the taxes, of every kind, nature and description, levied upon said premises.

All of which matters and things this respondent is ready to aver and prove as this court shall direct, and prays that it be declared by the judgment of this court that the title of this respondent to said section 5, township 2 south, range 6 west, San Bernardino base and meridian, is good and valid, and that the same was confirmed by said acts of Congress hereinbefore mentioned; and that this respondent be awarded its costs herein most wrongfully sustained.

GRAVES, O'MELVENY & SHANKLAND,
Solicitors for Respondent.

[Endorsed]: Original. No. 979. In the United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division. The United States of America, Complainant vs. Southern Pacific Railroad Co. et al., Defendants. Answer of Respondent Riverside Vineyard Co. Received copy of the within, this 18th day of March, 1901. James R. Finlayson, Asst. U. S. Attorney for Plaintiff. Filed Mar. 18, 1901. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Graves, O'Melveny & Shankland, Attorneys for Respondent.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY,
Respondents.
No. 979.

Answer of H. S. Button.

H. S. Button, one of the respondents in the above-entitled cause, to the bill of complaint of the United States of America, complainant.

This respondent disclaims any right, title or interest in any of the lands described in said bill of complaint.

Wherefore, said respondent asks that he be hence dismissed and that he be awarded his costs most wrongfully sustained.

RUSS AVERY,
Solicitor for Respondent, H. S. Button.

[Endorsed]: No. 979. U. S. Circuit Court, Ninth Circuit, Southern District of California, Southern Division. In Equity. The United States of America vs. The Southern Pacific Railroad Company et al. Answer of Defendant Button. Service of the within answer is hereby admitted this 7th day of May, 1901. James R. Finlayson, Asst. U. S. Atty. Attorney for Complainant. Filed May 7, 1901. Wm. M. Van Dyke, Clerk, By E. H. Owen, Deputy, Russ Avery, Rooms 632 and 634, Laughlin Building, Los Angeles, Cal., Attorney for Certain Defendants.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY,
Respondents.
No. 979.

Answer of Charles H. Colwell and Russ Avery.

The answer of Charles H. Colwell and Russ Avery, two of the respondents in the above-entitled cause to the bill of complaint of the United States of America, complainant.

These respondents respectively now and at all the times hereinafter saving to themselves all and all manner of benefit and advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these respondents are advised, it is material or necessary for them to make answer to, severally answering say:

That the respondents Charles H. Colwell is the owner in fee and in possession of the west ten (10) acres of the west twenty (20) acres of lots three (3) and four (4) in the southwest quarter of section seventeen (17), in township two (2) south, of range six (6), west, S. B. B. &

M.; and the respondents Russ Avery is the owner in fee and in possession of the east ten (10) acres of said west twenty (20) acres of lots three (3), and four (4), in the southwest quarter of section seventeen (17), in township two (2) south, of range six (6), west, S. B. B. & M., as to all the other of said lands described in the said bill of complaint these respondents, and each of them, disclaim any right, title or interest in the same or any part thereof, and as to said portions of section 17, above-described, they admit that they claim an interest therein, and claim to own the same in fee under the said Southern Pacific Railroad Company by virtue of said act of Congress of March 3, 1871, mentioned in said bill of complaint and not otherwise.

II.

Admit that by section 23 of the act of Congress, approved March 3, 1871, entitled "An act to incorporate the Texas and Pacific Railroad Company and to aid in the construction of its road, and for other purposes," the said Southern Pacific Railroad Company was thereby authorized to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restraints and conditions, as were granted to said Southern Pacific Railroad Company of California by the act of July 27, 1866.

III.

Admit that on the 3d day of April, 1871, said Southern Pacific Railroad Company duly accepted said act

of Congress and on that day filed in the office of the Commissioner of the General Land Office, its map of general route for a line of railroad from Tehachapi Pass via. Los Angeles, to the Colorado River and Fort Yuma, and thereafter, on the —— day of ————, 1874, constructed in a good, substantial and workmanlike manner its line of railroad from said Tehachapi Pass, via Los Angeles, to Fort Yuma, upon the Colorado River, and in that year finished in sections its map of definite location of its said line of railroad and filed the same in the office of the Commissioner of the General Land Office; and that the tracts of land in the bill of complaint herein described, and for which this suit is brought, were included within the twenty mile limits of the said route of said railroad company; and thereafter commissioners appointed by the President examined and accepted said railroad as duly constructed in accordance with said act of Congress.

IV.

Admit that on the 28th day of September, 1838, the Mexican government, duly made and executed to one Bandini a grant for the tract of land known as Jurupa, at present situated in the county of Riverside, formerly in the county of San Bernardino, in the Southern District of California, and which grant was duly confirmed to the said Bandini by the authorities of the government of Mexico, and juridical possession was given to the said Bandini by the government of Mexico to the said tract on December 4, 1838; admit that the said

tract of land so granted to said Bandini is described as in said bill of complaint particularly set forth.

V.

Admit that those portions of section 17, hereinbefore described, and claimed by these respondents, were and are embraced within the boundaries of said grant so made by the government of Mexico to said Bandini, and were a part thereof; that said Bandini filed his petition and claim for said land with the Board of Land Commissioners appointed and constituted pursuant to an act of Congress of March 3, 1851, entitled "An act to ascertain and settle the private land claims in the State of California, and on the 17th day of October, 1854, the said Board of Land Commissioners made and filed their decree confirming the grant of said Bandini, in accordance with the descriptions of said tract contained in the said grant as aforesaid; that in pursuance of the act of Congress of July 2, 1864, the Surveyor General of the United States for the District of California surveyed the said grant of the tract of land known as Jurupa, confirmed to said Bandini, for the purpose of enabling the United States to patent said land so confirmed to said Bandini; and that said survey was made and approved by the United States Surveyor General for California on the 26th day of February, 1872; and that at that time the plat and field-notes of said survey as so approved was duly filed in the office of the United States Surveyor General for the District of California, and in the office of the Commissioner of the General Land Office, and so remained as a valid and

subsisting segregation and reservation of the land embraced therein until the 24th day of February, 1877, when the said survey was disapproved by the Secretary of the Interior and a new survey of the said grant was then ordered; admit the said survey of said grant so made and approved on February 26, 1872, embraced within the boundaries of said grant those portions of said section 17, township 2 south, range 6 west, S. B. B. & M., hereinbefore described as owned by these respondents.

VI.

Respondents further admit that in November, 1878, a new survey was made of said Rancho Jurupa by the United States Surveyor General for the District of California, which was approved by the Department of the Interior, and a patent in due form of law was issued by the United States to said Bandini and to his heirs and assigns, on the 23d day of May, 1879, who accepted said patent in full satisfaction of said Jurupa grant; and admit that said patent and final survey did not include any portions of said section 17, township 2 south, range 6 west, S. B. B. & M., claimed by these respondents, or either of them, and for which this suit is brought.

VII.

Respondents deny that at the time of the passage of said act of Congress of March 3, 1871, or at the time the said Southern Pacific Railroad Company filed its map of definite location of its said line of railroad those portions of said section 17, township 2 south, range 6

west, S. B. B. & M., hereinbefore described as claimed by these respondents, or either of them, were sub judice or that the same were excepted out of or reserved from any grant of said company, or that the same or any of them are still owned by the complainant herein.

VIII.

These respondents, and each of them deny that on the —— day of ————, 1894, the Commissioner of the General Land Office and the Secretary of the Interior, without any authority or right so to do, or erroneously caused letters patent to be issued by the United States to the Southern Pacific Railroad Company, for those portions or any of them of said section 17, township 2 south, range 6 west, S. B. B. & M., claimed by these respondents or either of them, embraced in said Jurupa grant, but excluded therefrom upon patent.

IX.

These respondents and each of them admit that on the 20th day of November, 1900, the Secretary of the Interior demanded in writing of the said Southern Pacific Railroad Company a reconveyance and relinquishment to the United States of the said tracts of land described in the bill of complaint herein and that said demand was refused by said company, and not complied with.

And for further answer to the said bill of complaint these respondents allege:

I.

That on the 15th day of August, 1894, the Government of the United States, by its properly constituted authorities issued to the Southern Pacific Railroad Company of California, a corporation, a patent purporting to convey to it in fee simple the title of said Government to certain real property including the lands claimed by these respondents hereinbefore set forth and described, and being the same portions of said section 17, described in the bill of complaint herein; that said patent was thereupon recorded in book one, page 148, of Patents, in the office of the recorded of San Bernardino County, State of California, in which county at said date the said section 17 was situated, the same now, however, being situated in and being a portion of the county of Riverside, State of California.

II.

That on the 25th day of September, 1895, the said Southern Pacific Railroad Company sold those portions of section 17 hereinbefore specifically described by its deed of that date, to Mrs. Kate Bryant McVay, for the sum of $1,163.46, together with other land comprising in all 193.91 acres, that being the full value thereof, which said deed was recorded in book —— of Deeds, page ——, in the office of the recorder of San Bernardino County, State of California, and that the said Mrs. Kate Bryant McVay purchased said land in good faith for a valuable consideration, relying upon the validity of said patent, and believing that she was acquiring an

unincumbered title thereto by said purchase, and that thereupon said Mrs. Kate Bryant McVay entered upon the possession of said premises, and continued to occupy the same up to the time she conveyed the same to these respondents as hereinafter set out.

III.

That on the —— day of ————, 189——, the said Mrs. Kate Bryant McVay, by her deed conveyed said portions of section 17, township 2 south, range 6 west, as hereinbefore described, to Charles H. Colwell, by deed recorded in book ——, page ——, of Deeds, in the office of the recorder of Riverside County, State of California; and that this respondent in making said purchase, purchased the said land in good faith and for value, and relying upon the validity of the said patent, and without any notice that the Government claimed that the said land had been illegally or erroneously patented to the Southern Pacific Railroad Company as alleged in said bill.

IV.

That on the 22d day of March, in the year 1899, the said Charles H. Colwell, by his deed conveyed to respondent, Russ Avery, the east ten acres of the west twenty acres of lots 3 and 4, in the southwest quarter of section 17, township 2 south, range 6 west, S. B. B. & M., which said deed was recorded on the 11th day of April, 1899, in Book 79, of Deeds, at page 257, in the office of the recorder of Riverside County, State of California; and that said respondent, Russ Avery, in making said purchase, purchased the land in good faith, and for

value, and relying upon the validity of the said patent, and without any notice that the Government claimed that the said land had been illegally or erroneously patented to the Southern Pacific Railroad Company as alleged in said bill of complaint.

V.

These respondents, and each of them allege that under the act of Congress of March 2, 1896, entitled "An act to provide for the extension of the time within which suits may be brought to annul land patents and other purposes" (29 Stats. 42), supplementing the act of Congress of March 3, 1887, entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes" (24 Stats. 556); the title of these respondents to said portions of said section 17, hereinbefore described was confirmed, and no suit can be maintained by the complainant herein to disturb the title of these respondents thereto, or of either of them.

VI.

That ever since the conveyance of said land by the said railroad company to the said Mrs. Kate Bryant McVay, to wit, since September 25, 1895, these respondents, and their predecessors in interest have been in the open, notorious, exclusive and continuous possession of said land, claiming to be the owners of the same under patent so issued to said railroad company against the complainant herein and all the world; and during said

time have paid all of the taxes of every kind, nature and description levied upon said premises.—

All of which matters and things these respondents and each of them are ready to aver and prove as this court shall direct, and they pray that it be declared by the judgment of this court that the title of Charles H. Colwell, to the west 10 acres of the west 20 acres of lots 3 and 4, in the southwest quarter of section 17, in township 2 south, range 6 west, S. B. B. & M., and that the title of Russ Avery to the east 10 acres of the west 20 acres of lots 3 and 4 in the southwest quarter of section 17, in township 2 south, range 6 west, S. B. B. & M., is good and valid and that the same, and each of them was confirmed by said acts of Congress hereinbefore mentioned, and that these respondents and each of them be awarded their costs herein most wrongfully sustained.

RUSS AVERY,
Solicitor for Respondents.

[Endorsed]: No. 979. U. S. Circuit Court, Ninth Circuit, Southern District of California, Southern Division. In Equity. The United States of America, vs. The Southern Pacific Railroad Company et al. Answer of Defendants Colwell and Avery. Service of the within answer is hereby admitted this 7th day of May, 1901. James R. Finlayson, Asst. U. S. Atty., Attorney for Complainant. Filed May 7, 1901. Wm. M. Van Dyke, Clerk. By E. H. Owen, Deputy. Russ Avery, Rooms 632 and 634, Laughlin Building, Los Angeles, California, Attorney for Certain Defendants.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY,
Respondents.
No. 979.

Answer of J. P. Kyler.

The answer of J. P. Kyler, one of the respondents in the above-entitled cause to the bill of complaint of the United States of America, complainant.

This respondent now and at all times hereafter, save to himself, all manner of benefit and advantage of exception or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this respondent is advised, it is material or necessary for him to make answer to, answering says:

I.

That respondent, J. P. Kyler, otherwise known as J. P. Kiler, is owner in fee and in possession of lots 3 and 4 of section 33, township 1 south, range 5 west, San Bernardino base and meridian, as to all other of said lands described in the said bill of complaint this respondent disclaims any right, title or interest in the same or any part thereof, and as to said lots 3 and 4

of section 33, aforesaid, this respondent admits that he claims the same in fee under said Southern Pacific Railroad Company by virtue of said act of Congress of March 3, 1871, mentioned in said bill of complaint and not otherwise.

II.

Admits that by section 23 of the act of Congress, approved March 3, 1871, entitled "An act to incorporate the Texas and Pacific Railroad Company and to aid in the construction of its road, and for other purposes," the said Southern Pacific Railroad Company was thereby authorized to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restraints and conditions, as were granted to said Southern Pacific Railroad Company of California by the act of July 27, 1866.

III.

Admits that on the 3d day of April, 1871, said Southern Pacific Railroad Company duly accepted said act of Congress and on that day filed in the office of the Commissioner of the General Land Office its map of general route for a line of railroad from Tehachapi Pass, via Los Angeles, to the Colorado River and Fort Yuma, and thereafter, on the —— day of ————, 1874, constructed in a good, substantial and workmanlike manner its line of railroad from said Tehachapi Pass, via Los Angeles, to Fort Yuma upon the Colorado River, and in that year finished in sections its map of definite lo-

cation of its said line of railroad, and filed the same in the office of the Commissioner of the General Land Office; and that the tracts of land in the bill of complaint herein described, and for which this suit is brought, were included within the twenty mile limits of the said route of said railroad company; and thereafter commissoners appointed by the President examined and accepted said railroad as duly constructed in accordance with said act of Congress.

IV.

Admits that on the 28th day of September 1838, the Mexican government, duly made and executed to one Bandini a grant for the tract of land known as Jurupa, at present situated in the county of Riverside, formerly in the county of San Bernardino, in the Southern District of California, and which grant was duly confirmed to the said Bandini by the authorities of the Government of Mexico, and juridical possession was given to the said Bandini by the government of Mexico to the said tract on December 4, 1838; admits that the said tract of land so granted to said Bandini is described as in said bill of complaint particularly set forth.

V.

Admits that that portion of section 33, hereinbefore described, and claimed by this respondent, is embraced within the boundaries of said grant so made by the government of Mexico to said Bandini, and is a part thereof; that said Bandini filed his petition and claim for said land with the Board of Land Commissioners ap-

pointed and constituted pursuant to an act of Congress of March 3, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," and on the 17th day of October, 1854, the said Board of Land Commissioners made and filed their decree confirming the grant of said Bandini, in accordance with the description of said tract contained in the said grant as aforesaid; that in pursuance of the act of Congress of July 2, 1864, the Surveyor General of the United States for the district of California surveyed the said grant of the tract of land known as Jurupa, confirmed to said Bandini, for the purpose of enabling the United States to patent said land so confirmed to said Bandini; and that said survey was made and approved by the United States Surveyor General for California, on the 26th day of February, 1872; and that at that time the plat and field-notes of said survey as so approved was duly filed in the office of the United States Surveyor General for the District of California, and in the office of the Commissioner of the General Land Office, and so remained as a valid and subsisting segregation and reservation of the land embraced therein until the 24th day of February, 1877, when the said survey was disapproved by the Secretary of the Interior and a new survey of the said grant was then ordered; admits that the said survey of said grant so made and approved on February 26, 1872, embraced within the boundaries of said grant that portion of said section 33, township 1 south, range 5 west, S. B.

B. & M., hereinbefore described as owned by this respondent.

VI.

Respondent further admits that in November, 1878, a new survey was made of said Rancho Jurupa by the United States Surveyor General for the District of California, which was approved by the Department of the Interior, and a patent in due form of law was issued by the United States to said Bandini and to his heirs and assigns, on the 23d day of May, 1879, who accepted said patent in full satisfaction of said Jurupa grant; and admits that said patent and final survey did not include any portion of said section 33, township 1 south, range 5 west, S. B. B. & M., claimed by this respondent, and for which this suit is brought.

VII.

Respondent denies that at the time of the passage of said act of Congress of March 3, 1871, or at the time the said Southern Pacific Railroad Company filed its map of definite location of its said line of railroad that portion of said section 33, township 1 south, range 5 west, S. B. B. & M., hereinbefore described as claimed by this respondent, was sub judice or that the same was excepted out of or reserved from any grant of said company, or that the same is still owned by the complainant herein.

VIII.

This respondent denies that on the —— day of ———, 1894, the Commissioner of the General Land Office and the Secretary of the Interior, without any authority

or right so to do, or erroneously, caused letters patent to be issued by the United States to the Southern Pacific Railroad Company, for that portion of said section 33, township 1 south, range 5 west, S. B. B. & M., claimed by this respondent, embraced in said Jurupa Grant, but excluded therefrom upon patent.

IX.

This respondent admits that on the 20th day of November, 1900, the Secretary of the Interior demanded in writing of the said Southern Pacific Railroad Company a reconveyance and relinquishment to the United States of the said tract of land described in the bill of complaint herein and that said demand was refused by said company, and not complied with.

And for further answer to the said bill of complaint this respondent alleges:

I.

That on the 15th day of August, 1894, the Government of the United States, by its properly constituted authorities issued to the Southern Pacific Railroad Company of California, a corporation, a patent purporting to convey to it in fee simple the title of said Government to certain real property including the lands claimed by this respondent hereinbefore set forth and described, and being the same portion of said section 33, described in the bill of complaint herein; that said patent was thereupon recorded in book E of Patents, page 57, in the office of the recorder of San Bernardino County, State of California, in which county at said date the said section 33,

was situated, the same now, however, being situated in and being a portion of the county of Riverside, State of California.

II.

That on the 30th day of May, 1896, the said Southern Pacific Railroad Company sold lot 3 of section 33, township 1 south, range 5 west, S. B. B. & M., containing 41.52 acres, to this respondent, J. P. Kyler, at and for the sum of $415.20 being at the rate of $10.00 per acre, and that being the full value thereof, which said deed was recorded in book 226 of Deeds, page 89, in the office of the recorder of San Bernardino county, State of California, and that the said J. P. Kyler purchased said land in good faith for a valuable consideration, relying upon the validity of said patent, and believing that he was acquiring an unencumbered title thereto by said purchase, and thereupon this respondent entered upon the possession of said premises and has continuously occupied the same to the present time.

III.

That on the 25th day of July, 1896, the said Southern Pacific Railroad Company sold lot 4 of said section 33 hereinbefore described containing 11.31 acres to H. S. Button for the sum of $10.00 per acre, that being the full value thereof, which said deed was recorded in book —— of Deeds, at page ——, in the office of the recorder of San Bernardino county, State of California, and the said H. S. Button purchased said land in good faith for a valuable consideration relying upon the validity of said patent and believing that he was acquiring an un-

encumbered title thereto by said purchase; that on the 27th day of June, 1896, the said H. S. Button, by deed recorded on the 18th day of August, 1896, in the office of the recorder of San Bernardino county, State of California, recorded in book 229 of Deeds at page 40, sold the said lot 4 of said section 33, to this respondent for the sum of $300.00; that this respondent purchased said land in good faith for a valuable consideration relying upon the validity of said patent of said Button, aforesaid, and believing that he was acquiring an unencumbered title thereto of said purchase; that thereupon the said respondent entered into the possession of said premises and has continuously occupied the same to the present time; that this respondent at the time of making said purchase had no notice that the government claimed that the said land had been illegally or erroneously patented to the Southern Pacific Railroad Company as alleged in said bill of complaint; that this respondent further alleges that under the act of Congress of March 2, 1896, entitled "An act to provide for the extension of the time within which suit may be brought to annul land patents and other purposes" (29 Stats. 42), supplementing the act of Congress of March 3, 1887, entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes" (24 Stats. 556), the title of this respondent to said lots 3 and 4 of section 33 hereinbefore described was confirmed and no suit can be maintained by the com-

plainant herein to disturb the title of this respondent thereto.

IV.

That ever since the conveyance of said lands by the said Railroad Company to the said respondent, and H. S. Button, to wit, since May 30, 1896, this respondent and his predecessor in interest have been in the open, notorious, exclusive and continuous possession of said land, claiming to be the owners of the same under the patent here issued to said railroad company against the complainant and all the world; and during all of said time and for one year prior thereto this respondent has paid all of the taxes of every kind, nature and description levied upon said premises.

All of which matters and things this respondent is ready to aver and prove as this court shall direct; and he prays that it be declared by the judgment of this court that the title of this respondent to lots 3 and 4 in section 33, township 1 south, range 5 west, S. B. B. & M., is good and valid and that the same was confirmed by said acts of Congress hereinbefore mentioned; and that this respondent be awarded his costs herein most wrongfully sustained.

RUSS AVERY,
Solicitor for Respondent.

[Endorsed]: No. 979. U. S. Circuit Court, Ninth Circuit, Southern District of California, Southern Division. In Equity. The United States of America vs. The Southern Pacific Railroad Company et al. Answer of Defendant Kyler. Service of the within answer is hereby ad-

mitted this seventh day of May, 1901. James R. Finlayson, Asst. U. S. Atty., Attorney for Complainant. Filed May 7, 1901. Wm. M. Van Dyke, Clerk. By E. H. Owen, Deputy. Russ Avery, Rooms 632 and 634 Laughlin Building, Los Angeles, California, Attorney for Certain Defendants.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE UNITED STATES OF AMERICA, Complainant,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al., Respondents.
No. 979.

Answer of William H. Davis.

The answer of William H. Davis, one of the respondents in the above-entitled cause to the bill of complaint of the United States of America, complainant.

This respondent now and at all times hereafter, saving to himself, all manner of benefit and advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this respondent is advised it is material or necessary for him to make answer to, answering says:

I.

That respondent, William H. Davis, is owner in fee and in possession of the southeast quarter (S. E. ¼) of the northeast quarter (N. E. ¼) of section thirty-three (33) in township one (1) south, range five (5) west, San Bernardino base and meridian, containing forty acres, and as to all other of said lands described in the said bill of complaint this respondent disclaims any right, title or interest in the same or any part thereof, and as to said forty acres of section 33, aforesaid, this respondent admits that he claims the same in fee under said Southern Pacific Railroad Company by virtue of said act of Congress of March 3, 1871, mentioned in said bill of complaint and not otherwise.

II.

Admits that by section 23 of the act of Congress approved March 3, 1871, entitled "An act to incorporate the Texas and Pacific Railroad Company and to aid in the construction of its road, and for other purposes," the said Southern Pacific Railroad Company was hereby authorized to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants and privileges, and subject to the same limitations, restraints and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July 27, 1866.

III.

Admits that on the 3d day of April, 1871, said Southern Pacific Railroad Company duly accepted said act of Congress and on that day filed in the office of the Commissioner of the General Land Office its map of general route for a line of railroad from Tehachapi Pass, via Los Angeles, to the Colorado River and Fort Yuma, and thereafter, on the —— day of ————, 1874, constructed in a good, substantial and workmanlike manner its line of railroad from said Tehachapi Pass, via Los Angeles, to Fort Yuma, upon the Colorado River, and in that year finished in sections its map of definite location of its line of railroad, and filed the same in the office of the Commissioner of the General Land Office; and that the tracts of land in the bill of complaint herein described, and for which this suit is brought, were included within the twenty mile limits of the said route of said railroad company; and thereafter commissioners appointed by the President, examined and accepted said railroad as duly constructed in accordance with said act of Congress.

IV.

Admits that on the 28th day of September, 1838, the Mexican government, duly made and executed to one Bandini a grant for the tract of land known as Jurupa, at present situated in the county of Riverside, formerly in the county of San Bernardino, in the Southern District of California, and which grant was duly confirmed to the said Bandini by the authorities of the government

of Mexico, and juridical possession was given to the said Bandini by the government of Mexico to the said tract on December 4, 1838; admits that the said tract of land so granted to said Bandini is described as in said bill of complaint particularly set forth.

V.

Admits that that portion of section 33, hereinbefore described, and claimed by this respondent, is embraced within the boundaries of said grant so made by the government of Mexico to said Bandini, and is a part thereof; that said Bandini filed his petition and claim for said land with the Board of Land Commissioners appointed and constituted pursuant to an act of Congress of March 3, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," and on the 17th day of October, 1854, the said Board of Land Commissioners made and filed their decree confirming the grant of said Bandini in accordance with the description of said tract contained in the said grant as aforesaid; that in pursuance of the act of Congress of July 2, 1864, the Surveyor General of the United States for the District of California surveyed the said grant of the tract of land known as Jurupa, confirmed to said Bandini, for the purpose of enabling the United States to patent said land so confirmed to said Bandini; and that said survey was made and approved by the United States Surveyor General for California on the 26th day of February, 1872; and that at that time the plat and field-notes of said survey as so approved were duly filed in the office of

the United States Surveyor General for the District of California, and in the office of the Commissioner of the General Land Office, and so remained as a valid and subsisting segregation and reservation of the land embraced therein until the 24th day of February, 1877, when the said survey was disapproved by the Secretary of the Interior and a new survey of the said grant was then ordered; admits that the said survey of said grant so made and approved on February 26, 1872, embraced within the boundaries of said grant that portion of the southeast quarter (S. E. ¼) of the northeast quarter (N. E. ¼) of section thirty-three (33) in township one (1) south, range five (5) west, San Bernardino base and meridian, containing forty acres.

VI.

Respondent further admits that in November, 1878, a new survey was made of said Rancho Jurupa by the United States Surveyor General for the District of California, which was approved by the Department of the Interior, and a patent in due form of law was issued by the United States to said Bandini and to his heirs and assigns, on the 23d day of May, 1879, who accepted said patent in full satisfaction of said Jurupa grant; and admits that said patent and final survey did not include any portion of the southeast quarter (S. E. ¼) of the northeast quarter (N. E. ¼) of section thirty-three (33) in township one (1) south, range five (5) west, San Bernardino base and meridian, containing forty acres.

VII.

Respondent denies that at the time of the passage of said act of Congress of March 3, 1871, or at the time the said Southern Pacific Railroad Company filed its map of definite location of its said line of railroad that portion of the southeast quarter (S. E. ¼) of the northeast quarter (N. E. ¼) of section thirty-three (33) in township one (1) south, range five (5) west, San Bernardino base and meridian, hereinbefore described as claimed by this respondent, was sub judice or that the same was excepted out of or reserved from any grant of said company, or that the same is still owned by the complainant herein.

VIII.

This respondent denies that on the —— day of ————, 1894, the Commissioner of the General Land Office and the Secretary of the Interior, or either of them, without any authority or right so to do, or erroneously, caused letters patent to be issued by the United States to the Southern Pacific Railroad Company, for that portion of the southeast quarter (S. E. 1/4), of the northeast quarter (N. E. 1/4), of section thirty-three (33), in township one (1) south, range five (5) west, San Bernardino base and meridian, claimed by this respondent, embraced in said Jurupa Grant, but excluded therefrom upon patent.

IX.

This respondent admits that on the 20th day of November, 1900, the Secretary of the Interior demanded

in writing of the said Southern Pacific Railroad Company a reconveyance and relinquishment to the United States of the said tract of land described in the bill of complaint herein and that said demand was refused by said company, and not complied with.

And for further answer to the said bill of complaint this respondent alleges:

I.

That on the 15th day of August, 1894, the Government of the United States, by its properly constituted authorities issued to the Southern Pacific Railroad Company of California, a corporation, a patent purporting to convey to it in fee simple the title of said government to certain real property including the lands claimed by this respondent hereinbefore set forth and described, and being the same portion of said section 33, described in the bill of complaint herein; that said patent was thereupon recorded in Book "E" of Patents, page 57, in the office of the recorder of San Bernardino County, State of California, in which county at said date the said section 33 was situated.

II.

That on the 8th day of July, 1896, the said Southern Pacific Railroad Company sold said southeast quarter of the northeast quarter of section 33, township 1 south, range 3 west, S. B. B. & M., containing 40 acres to H. S. Button at and for the sum of four hundred dollars, being at the rate of ten dollars per acre, which said deed was duly recorded in the office of the

recorder of San Bernardino County, State of California, and the said H. S. Button purchased said land for a valuable consideration relying upon the validity of said patent and believing that he was acquiring an unencumbered title thereto by said purchase.

III.

That on the 29th day of December, 1899, the said H. S. Button sold said land hereinbefore described to this respondent at and for the sum of six hundred dollars, being at the rate of fifteen dollars per acre and that being the full value thereof, which said deed was duly recorded in the office of the recorder of Riverside County, State of California, and this respondent purchased said land in good faith for a valuable consideration relying upon the validity of said patent and believing that he was acquiring an unencumbered title thereto by said purchase; and thereupon this respondent entered upon the possession of said premises and has continuously occupied the same until the present time; that this respondent at the time of making said purchase had no notice that the Government claimed that the said land had been illegally or erroneously patented to the Southern Pacific Railroad Company as alleged in said bill of complaint.

IV.

This respondent further alleges that under the act of Congress of March 2, 1896, entitled "An act to provide for the extension of the time within which suits may be brought to annul land patents and other purposes" (29 Stats. 42), supplementing the act of Congress

of March 3, 1887, entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes" (24 Stats. 556), the title of this respondent to said southeast quarter of the northeast quarter of section 33, hereinbefore described, was confirmed and no suit can be maintained by the complainant herein to disturb the title of this respondent thereto.

V.

That ever since the conveyance of said lands by said railroad company to the said H. S. Button, to wit, since July 8, 1886, this respondent and his predecessor in interest have been in the open, notorious, exclusive and continuous possession of said land, claiming to be the owners of the same under the patent here issued to said railroad company by said complainant; and during all of said times and for a long time prior thereto this respondent and his predecessor in interest have paid all of the taxes of every kind, nature and description levied upon said premises.

All of said matters and things this respondent is ready to aver and prove as this Court shall direct; and he prays that it be declared by the judgment of this Court that the title of this respondent to said southeast quarter of the northeast quarter of section 33, in township 1 south, range 5 west, San Bernardino base and meridian, is good and valid and that the same was confirmed by said acts of Congress hereinbefore men-

tioned; and that this respondent be awarded his costs herein most wrongfully sustained.

RUSS AVERY,
Solicitor for Respondent.

[Endorsed]: No. 979. U. S. Circuit Court, Ninth Circuit, Southern District of California, Southern Division. In Equity. The United States of America vs. The Southern Pacific Railroad Company et al. Answer of Defendant Davis. Service of the within answer is hereby admitted this 24th day of May, 1901. Frank P. Flint, Attorney for Complainant. Filed May 24, 1901. Wm. M. Van Dyke, Clerk. By E. H. Owen, Deputy. Russ Avery, Rooms 632 and 634, Laughlin Building, Los Angeles, California, Attorney for Certain Defendants.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Respondents.
No. 979.

Answer of Frank Walker.

The respondent Frank Walker, now and at all times hereafter reserving all manner of benefit and advantage to him of exception to the errors and insuffi-

ciencies in said bill contained, for answer to the bill of complaint herein, or unto so much or such part thereof as this respondent is advised it is material for him to make answer to, answers and says:

I.

He admits that he claims an interest in that portion of the land described in the bill of complaint as follows, to wit: The north half (1/2) of the northeast quarter (1/4) of section thirty-one (31), in township one (1) south, of range five (5) west, San Bernardino base and meridian, containing eighty (80) acres.

And as to all the other of said lands described in said bill of complaint, he disclaims any right, title or interest in the same, or any part thereof. And as to the said north half (1/2) of the northeast quarter (1/4) of said section thirty-one (31), said respondent admits that he claims to own the said lands under the said Southern Pacific Railroad Company, by virtue of said act of Congress of March 3d, 1871, mentioned in said bill of complaint, and not otherwise.

II.

He admits that by section 23 of the act of Congress, approved March 3, 1871, entitled "An act to incorporate the Texas and Pacific Railroad Company and to aid in the construction of its road, and for other purposes," the said Southern Pacific Railroad Company was thereby authorized to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colo-

rado River, with the same rights, grants and privileges, and subject to the same limitations, restraints and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July 7, 1866.

III.

He admits that on the 3d day of April, 1871, said Southern Pacific Railroad Company duly accepted said act of Congress and on that day filed in the office of the Commissioner of the General Land Office its map of general route for a line of railroad from Tehachapi Pass, via Los Angeles, to the Colorado River, and Fort Yuma, and thereafter, on the —— day of ————, 1874, constructed in a good, substantial and workmanlike manner its line of railroad from said Tehachapi Pass, via Los Angeles, to Fort Yuma, upon the Colorado River, and in that year finished in sections its map of definite location of its said line of railroad, and filed the same in the office of the Commissioner of the General Land Office; and that the tracts of land in the bill of complaint herein described and for which this suit is brought, were included within the twenty mile limits of the said line of route of said railroad company; and thereafter commissioners appointed by the President examined and accepted said railroad as duly constructed in accordance with said act of Congress.

IV.

He further admits that on the 28th day of September, 1838, the Mexican government duly made and executed to one Bandini a grant for the tract of land known

as Jurupa, at present situated in the county of Riverside, formerly in the county of San Bernardino, in the Southern District of California, and which grant was duly confirmed to the said Bandini by the authorities of the government of Mexico, and juridical possession was given to the said Bandini by the government of Mexico to the said tract on December 4, 1838; admits that the said tract of land so granted to said Bandini is described as follows, to wit:

"Commencing at the foot of a small hill, standing alone, at the cañada which the Messrs. Yorba recognize as their boundary, on the further side of the river Jurupa, which hill the Indians, in their tongue, call 'Pachappa,' which was taken for a landmark, placing on it certain stones on top of others; thence course westerly along the bank of the said river thirty thousand varas to the point of the same table-land on which Mr. Bandini had established his house and where the said river makes a bend, where a stake was driven for a landmark; thence, northerly, fronting towards Cucamonga, seven thousand varas, passing between the two springs of Guapan, ending at the first white sand bank which there is on said course towards Cucamonga; thence easterly the same thirty thousand varas to a small lone mountain on the left hand of the high road going from San Gabriel to San Bernardino, called by the Indians 'Catamalcay,' and which was designated as a landmark; thence southerly seven thousand varas to the point of beginning at the foot of the small hill called 'Pachappa,' which makes a corner, east, west."

That said Bandini applied for confirmation of said grant, as alleged in said bill of complaint.

V.

He denies that the land claimed by this respondent, to wit, the north half (1/2) of the northeast quarter (1/4) of said section thirty-one (31), township one (1) south, range five (5) west, San Bernardino base and meridian, was or is embraced within the boundaries of said grant so made by the government of Mexico to said Bandini, or that the same ever was a part thereof.

VI.

He admits that in pursuance of an act of Congress of July 2, 1864, a survey of the said grant was made and approved by the United States Surveyor General for California on the 26th day of February, 1872, and that at that time the plat and field-notes of said survey as so approved were duly filed in the office of the United States Surveyor General for the District of California, and in the office of the Commissioner of the General Land Office, and so remained as a valid and subsisting segregation and reservation of the land embraced therein until the 21st day of February, 1877, when the said survey was disapproved by the Secretary of the Interior and a new survey of the said grant was then ordered; but denies that the survey of the said grant so made and approved on February 26, 1872, embraced, or ever embraced within the boundaries of said grant the said north half (1/2) of the northeast quarter (1/4) of said section thirty-

one (31), township one (1) south, range (5) west, San Bernardino Base and Meridian, claimed by this respondent.

VII.

Respondent further admits that in November, 1878, a new survey was made of said rancho Jurupa by the United States Surveyor General for the District of California, which was approved by the Department of the Interior, and a patent in due form of law was issued by the United States to said Bandini and to his heirs and assigns on the 23d day of May, 1879, who accepted said patent in full satisfaction of said Jurupa grant; and admits that said patent and final survey do not include any portion of the said section 5, township 2 south, range 6 west, San Bernardino base and meridian, claimed by this respondent, and for which this suit is brought; but this respondent denies that the former survey hereinbefore alluded to, made of said grant, or any survey ever made thereof, ever did include said north half (1/2) of the northeast quarter (1/4) of section thirty-one (31), township one (1) south, range five (5) west. This respondent denies that at the time of the passage of said act of Congress of March 3, 1871, or at the time the said Southern Pacific Railroad Company filed its map of definite location of its said line of railroad, the said north half (1/2) of the northeast quarter (1/4) of section thirty-one (31), township one (1) south, range (5) west, San Bernardino base and meridian, hereinbefore described as claimed by this respondent, was sub

judice, or that it ever was sub judice, or that it ever was excepted out of or reserved from said grant, or any grant, to said company, and denies that said land is still owned by the complainant herein.

VIII.

Respondent denies that on the —— day of ———, 1894, the Commissioner of the General Land Office and the Secretary of the Interior, without any authority so to do, or erroneously, or either, caused letters patent to be issued by the United States to the Southern Pacific Railroad Company for that portion of the land in said bill of complaint described claimed by this respondent, to wit, said north half (1/2) of the northeast quarter (1/4) of section thirty-one (31), township one (1) south, range five (5) west, S. B. B. & M.; and denies that said north half of the northeast quarter of said section thirty-one was embraced in said Jurupa Grant, or that the same was excluded therefrom upon patent; and this respondent admits that patent for said north half of the northeast quarter of section thirty-one was issued by the Commissioner of the General Land Office and the Secretary of the Interior, August 15th, 1894, and this respondent alleges that, on the said 15th day of August, the United States Government, by its duly authorized officers, duly issued its patent to the said Southern Pacific Railroad Company of California, a corporation, conveying to it said north 1/2 of the northeast 1/4 of section 31, township 1 south, range 5 west, San Bernardino base and meridian, now owned by this re-

spondent, and that issuance of said patent was in pursuance of section 23 of the act of Congress of March 3, 1871, and that, at the time of the issuance thereof the said Southern Pacific Railroad Company was entitled to receive said patent, having earned the same under the terms of said act, and that the said patent was in all respects regularly issued, and vested in said railroad company the title of the United States Government to said north 1/2 of the northeast 1/4 of section 31, township 1 south, range 5 west, San Bernardino base and meridian, absolutely and free and clear of any claim of the Government of the United States.

IX.

This respondent admits that on the 20th day of November, 1900, the Secretary of the Interior demanded in writing of the said Southern Pacific Railroad Company a reconveyance and relinquishment to the United States of the said tracts of land described in the bill of complaint herein, and that said demand was refused by said company, and not complied with; but this respondent denies that the said patent for said north 1/2 of the northeast 1/4 of section 31, township 1 south, range 5 west, San Bernardino base and meridian, was issued to said railroad company without authority, or erroneously, or either, or that said land was erroneously patented to said railroad company by the United States Government.

And for further answer to the said bill of complaint this respondent alleges:

I.

That on the 15th day of August, 1894, the Government of the United States, by its properly constituted authorities, duly and regularly issued to the Southern Pacific Railroad Company of California, a corporation, a patent conveying to it in fee simple the title of said Government to the said north 1/2 of the northeast 1/4 of said section 31, township 1 south, range 5 west, San Bernardino base and meridian, containing eighty acres of land, and being a portion of the property described in the bill of complaint herein. That the said land never was embraced within any of the boundaries of the Jurupa or any other Mexican grant, but was included within the twenty mile limits of the route of the Southern Pacific Railroad Company fixed and settled as in the manner in the bill of complaint herein set out, and that at the time of the issuance of said patent the said Southern Pacific Railroad Company had earned the same under section 23 of the act of Congress approved March 23d, 1871, mentioned in the bill of complaint herein, and that thereupon said patent was on the —— day of ————, 18——, recorded in book —— of Patents, page ——, in the office of the Recorder of San Bernardino County, State of California, in which county, at said date and ever since, the said above-described lands were situated.

II.

That on or about the 9th day of January, 1891, this respondent contracted with said Southern Pacific Rail-

road Company to purchase the said lands for the sum of four hundred and eighty dollars ($480.00), and on the 28th day of February, 1895, in pursuance of said contract the said Southern Pacific Railroad Company conveyed the said lands in fee simple to this respondent, who is now, and ever since said date has been, the owner thereof. That this respondent purchased the same in good faith and paid the full value therefor to said Southern Pacific Railroad Company, to wit, the said sum of four hundred eighty dollars ($480.00), and in good faith, relying upon the validity of said patent and believing that he was acquiring the unencumbered title to said premises by said conveyance from said Southern Pacific Railroad Company, made as aforesaid; and ever since the 9th day of January, 1891, this respondent has been in possession of said premises, and has paid all of the taxes levied upon said land. That at no time prior to the said contract, or said deed, or the payment of said taxes, did this respondent have any notice that the said Government claimed that said land had been illegally or erroneously patented; and that respondent was at all times without such notice until the bill of complaint was filed herein. And this respondent further shows that even if the said land had been erroneously patented, to the said Southern Pacific Railroad Company, as alleged in said bill (which fact this respondent at all times denies), nevertheless, under the act of Congress of March 2d, 1896, entitled "An act to provide for the extension of the time within which suits may be brought to annul land patents, and other purposes" (29th Stats.

42), supplementing the act of Congress of March 3, 1887, entitled "An act to provide for the adjustment of land grants made by Congres to aid in the construction of railroads, and for forfeiture of unearned lands, and for other purposes," the title of this respondent to said land was confirmed, and no suit can be maintained by the complainant herein to disturb the title of this respondent thereto.

III.

That ever since the 9th day of January, 1891, this respondent has been in the open, notorious, exclusive and continuous possession of said land, claiming to be the owner of the same under said patent so issued to said railroad company and said conveyance by it, against the plaintiff herein and all the world.

All of which matters and things this respondent is ready to aver and prove, as this court shall direct, and prays that it be declared by the judgment of this Court that the title of this respondent to the said north half (1/2) of the northeast quarter (1/4) of section thirty-one (31); township one (1) south, range five (5) west, San Bernardino base and meridian, is good and valid, and that the same was confirmed by said acts of Congress hereinbefore mentioned, and that this respondent be rewarded his costs most wrongfully sustained.

GOODRICH & McCUTCHEN,
Solicitors for Respondent.

[Endorsed]: No. 979. In the U. S. Circuit Court, 9th Circuit, Southern District of California. United States,

Plaintiff, vs. Southern Pacific Railroad Co. et al., Defendants. Answer of Deft. Frank Walker. Service of the within answer is hereby admitted this 11th day of June, 1901. Joseph H. Call, Attorney for Complainant. Spl. U. S. Atty. Filed June 11, 1901. Wm. M. Van Dyke, Clerk. Goodrich & McCutchen, Southern California Savings Bank Building, corner Spring and Court Sts., Los Angeles, Cal., Attorneys for Defendant Walker.

In the Circuit Court of the United States, Southern District of California Southern Division.

IN EQUITY.

UNITED STATES OF AMERICA,
Complainant,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.
Case No. 979.

Separate Answer of Southern Pacific Railroad Company et al.

The separate answer of the defendants Southern Pacific Railroad Company, Central Trust Company of New York (as trustee), D. O. Mills and Homer S. King (as trustees) to the complainant's bill of complaint herein.

The defendants Southern Pacific Railroad Company, Central Trust Company of New York (as trustee), D. O.

Mills and Homer S. King (as trustees), now and at all times saving to themselves and each of them, all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties or imperfections in the said bill of complaint, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, jointly and severally admit, deny, and allege as follows:

Sub. I.

Par. 1. Admit, and allege, that the defendant Southern Pacific Railroad Company is a corporation, duly organized and existing under and in virtue of the laws of the State of California and of the United States.

Par. 2. Admit and allege it to be true as set forth in the said bill, that by section 23 of the act of Congress approved on March 3d, 1871, referred to in the said bill, the defendant Southern Pacific Railroad Company was authorized to construct a line of railroad from a point at or near Tehachapi Pass by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restraints and conditions, as were granted the said Southern Pacific Railroad Company by the act of Congress approved on July 27th, 1866, entitled "An act grantng lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Kansas to the Pacific Coast"; which acts of Congress, as printed, respectively, in volume 14, page

292 et seq., and volume 16, page 573 et seq., United States Statutes at Large, are referred to and made part of this answer.

Par. 3. Admit it to be true, as set forth in the said bill, that the defendant Southern Pacific Railroad Company, duly accepted the terms, conditions and impositions of the said Act of March 3d, 1871, and deposited said acceptance in the office of the Secretary of the Interior, within the time allowed by law therefor, but not on April 3d, 1871, as is stated in the said bill.

Par. 4. Admit it to be true, as set forth in the said bill, that on April 3d, 1871, the defendant Southern Pacific Railroad Company duly filed with the Commissioner of the General Land Office a map designating the general route of the railroad contemplated by section 23 of the said act of March 3d, 1871; and allege that the said map was on that day duly accepted and approved by the Commissioner, and also by the Secretary of the Interior.

Par. 5. Allege that on April 21st, 1871, the Commissioner of the General Land Office, under direction of the Secretary of the Interior, withdrew all the odd numbered sections of land within thirty miles on each side of the line of route shown on the said general route map, from pre-emption and homestead entry, sales and other disposition by the United States; and all the lands described in the said bill by legal subdivisions, as sections and parts of sections, have remained so withdrawn ever since.

Par. 6. Admit it to be true, as set forth in the said bill, that the defendant Southern Pacific Railroad Com-

pany constructed its railroad along the line of route shown on the general route map referred to in the 4th paragraph hereof, in a good, substantial and workmanlike manner; and admit that maps of the said road as definitely located and constructed were duly filed in the office of the Commissioner of the General Land Office, and accepted and approved by the Secretary of the Interior; and admit that Commissioners appointed by the President of the United States duly accepted the said railroad as constructed; and admit that the map of definite location and construction of that section of the said railroad which is opposite and coterminous with the lands described in the said bill by legal subdivisions, as sections and parts of sections, was accepted and approved, as aforesaid, during the year 1874.

Par. 7. Admit, and allege, that all the lands described in the said bill by legal subdivisions, as sections and parts of sections, and for which this suit was brought, were and are included within the twenty-mile limits of the land grant made unto the defendant Southern Pacific Railroad Company by the said act of March 3d, 1871, and are all within twenty miles on one side of the said railroad of the defendant Southern Pacific Railroad Company, as definitely located and constructed; and in this behalf these defendants allege that all of the said lands constitute and comprise part and portion of the said land grant, and no part of the said lands are, or at any time were, included or covered by any exception thereto, but all of the lands described in the said bill by legal subdivisions, as sections and parts of

sections, were granted to the defendant Southern Pacific Railroad Company by the said act of Congress of March 3d, 1871.

Sub. II.

Par. 8. Allege that they have not, nor has either of them, any knowledge or information as to the following matters set forth in the said bill, and on that ground deny that on September 28th, 1838, or at any time, the Mexican Government duly, or otherwise, made or executed to one Bandini a grant for the, or any, tract of land known as "Jurupa"; and deny that such, or any, grant was duly, or otherwise, confirmed to the said Bandini by the, or any authorities of the Government of Mexico; and deny that juridical possession, or any possession, was given to said Bandini by the Government of Mexico, of any land described in the said bill.

Par. 9. Deny that on September 25th, 1852, or at any time, said Bandini filed his petition and claim for said land or any land, with the Board of Land Commissioners appointed and constituted pursuant to the act of Congress of March 3d, 1851, referred to in the said bill; but admit that on September 25th, 1852, a paper bearing that date, signed "Scott & Granger, Attys. for Petitioner," addressed to the United States Commissioners for the adjudication and settlement of California land claims, purporting to be the petition of Juan Bandini for confirmation of his pretended claim therein described as "that part of the Ranch of Jurupa called Guapa," was filed in the office of the said United States Commissioners. And in this behalf these defendants allege that

the claim thus presented for confirmation was of a lesser quantity of land, to the amount of seven leagues of grazing land within general boundaries therein set forth, containing a greater quantity of land than seven leagues; which claim of seven leagues of grazing land did not, and does not, conflict with nor include any of the lands described in the said bill by legal subdivisions, as sections or parts of sections.

Par. 10. Deny that on October 17th, 1854, or at any time, the Board of Land Commissioners referred to in the said bill, filed their decree confirming the grant, or any grant, of the said Bandini; but admit that on October 17th, 1854, the United States Commissioners referred to in the next preceding paragraph of this answer, made and filed a decree purporting to confirm a claim of Juan Bandini to and for seven square leagues of land therein described. And in this behalf these defendants allege that the lands described in the said decree do not conflict with nor include any of the lands described in the bill of complaint herein by legal subdivisions, as sections or parts of sections.

Par. 11. Allege that thereafter, within the time allowed therefor, an appeal was duly taken and perfected from the said decree of the United States Commissioners to the District Court of the United States for the District of California, in which District Court such proceedings were had in the matter of the said appeal as that Abel Stearns was substituted for the said Bandini, and on April 5th, 1861, the said District Court made and filed a decree confirming unto Abel Stearns the lands in said

decree described; but deny that the description of lands given and made in the said decrees includes, or conflicts with, any of the lands described in the bill of complaint herein by legal subdivisions, as sections or parts of sections.

Par. 12. Allege that thereafter, within the time allowed therefor, an appeal was duly taken and perfected from the said decree of the said District Court to the Supreme Court of the United States, and such proceedings were had in the last mentioned appeal as that on February ——, 1875, the Supreme Court of the United States dismissed the said appeal, and remanded the case to the said District Court of the United States; which mandate was filed in the said District Court on March 2d, 1875, and on the last-mentioned date the said District Court made and entered its order declaring its said decree of April 5th, 1861, to be a final decree.

Par. 13. Allege that thereafter, and during the year 1878, the Surveyor General of the State of California caused the survey of the said claim as finally confirmed by the said order of March 2d, 1875, to be surveyed by Wm. Minto, his deputy surveyor, who made such survey according to the said decree of confirmation, and forwarded the said survey, with a plat thereof, to the Commissioner of the General Land Office, for his approval, as required by law; and the Commissioner of the General Land Office, finding that the said survey and plat were made in compliance with law, and truly and correctly followed the said decree of confirmation, approved the said survey and plat;

and on May 23d, 1879, the proper officers of the United States issued a patent conveying the lands of the said decree of confirmation unto Abel Stearns, describing the lands of the patent according to the said survey and plat of Wm. Minto, and by reference and incorporation making the said survey and plat a part of the patent. And in this behalf these defendants allege that the lands described in the said survey of Wm. Minto, in the said plat, and in the said patent, do not conflict with nor include any of the lands described in the bill of complaint herein by legal subdivisions, as sections or parts of sections; and by the approval of the said Minto survey and plat, and the issue of the said patent in conformity thereto, it became finally determined what lands were included and embraced by the several decrees hereinbefore set forth, and by the said claim of Bandini.

Par. 14. Deny that in pursuance of the act of Congress of July 2d, 1864, referred to in the bill of complaint herein, the Surveyor General of the United States for the District of California surveyed the said, or any, grant of the tract of land known as Jurupa, confirmed to said Bandini, for the purpose of enabling the United States to patent said, or any, land so, or otherwise, confirmed to said Bandini. In this behalf these defendants admit, and allege, that at different dates after presentation of the said claim of Bandini in 1854, and before the final confirmation thereof in 1875, as aforesaid several pretended surveys and maps of the lands embraced by the said claim, including

the survey and map referred to in the bill of complaint herein as made and approved by the Surveyor General of California on February 26th, 1872, were made and filed by the then Surveyor General of the State of California, and by other persons; but these defendants allege that all such pretended surveys and maps made prior to the said final confirmation were so made and filed without lawful authority, and the making and filing thereof in nowise affected the status of any lands; and these defendants further allege that the United States Surveyor General for California had no lawful authority to survey or map the said claim of Bandini at any time before the same was finally confirmed, nor had he lawful authority to approve any such survey or map at any time, either before or after the same was finally confirmed. These defendants admit that the said pretended plat of May 26th, 1872, purported to embrace some of the lands described in the bill of complaint herein by legal subdivisions, as sections and parts of sections; but deny that the said pretended map embraced all of the said lands.

Par. 15. Deny that any plat or field-notes approved by the Surveyor General of California on February 26th, 1872, and filed in his office or in the office of the Commissioner of the General Land Office, at any time constituted, or remained as, a valid or subsisting segregation or reservation of the land embraced thereby, until February 21st, 1877, until any other time, or at all; but admit that all surveys and plats of lands of the said claim of Bandini, were on or about February

21st, 1877, disapproved by the Secretary of the Interior, and the survey set forth in paragraph 13 hereof was thereafter duly made and approved.

Par. 16. Admit and allege that the survey referred to in the bill of complaint herein as made in November, 1878, and the patent referred to in the said bill as issued on May 23d, 1879, did not, nor did either of them, include any of the lands described in the said bill by legal subdivisions, as sections and parts of sections, being the lands for which this suit was brought; but deny that said patent was issued to Bandini, as stated in the said bill, and allege that said patent was issued to Abel Stearns.

Sub. III.

Par. 17. Deny that on March 3d, 1871, or at any time thereafter the lands described in the bill of complaint herein by legal subdivisions, as sections and parts of sections, or any thereof, were sub judice, or were excepted out of, or were reserved from the grant of lands made to the defendant Southern Pacific Railroad Company by the said act of Congress of March 3d, 1871; and deny that the said lands, or any thereof, are still owned by the United States. And in this behalf these defendants allege that all of the said lands constitute and comprise a part and portion of the lands granted to the defendant Southern Pacific Railroad Company by the said act of March 3d, 1871, and the said lands were not, nor were any of them, at any time excepted out of, or reserved from, the said grant.

Par. 18. Admit that on August 15th, 1894, the proper officers of the United States issued a patent to the defendant Southern Pacific Railroad Company for the lands in said patent described, including certain of, but not all of, the lands described in the bill of complaint herein by legal subdivisions, as sections and parts of sections; but deny that said patent was issued without authority, or erroneously, or for tracts at any time embraced in the Jurupa grant, or at any time excluded from the said grant by the act of March 3d, 1871, to the defendant Southern Pacific Railroad Company. And in this behalf these defendants allege that no patent was issued by the United States to the defendant Southern Pacific Railroad Company during the year 1894, or at any time since, other than the said patent of August 15th, 1894, which conveyed or purported to convey any lands described in the bill of complaint herein; and these defendants further allege that the said patent of August 15th, 1894, was duly issued by the proper officers of the United States, with full and lawful authority so to do, and conveyed all lands described in the bill of complaint herein by legal subdivisions, as sections and parts of sections, except the lands described in paragraphs 19, 20 and 21 of this answer.

Par. 19. Allege that no patent has ever been issued to the defendant Southern Pacific Railroad Company for the NW. 1/4 of SE. 1/4 of section 1, township 2 south, range 6 west, described in the bill of complaint herein.

Par. 20. Allege that on January 9th, 1885, the proper officers of the United States duly and lawfully issued a patent, bearing that date, unto the defendant Southern Pacific Railroad Company conveying lots 1, 3, 7, 8, 9, and 10, N. 1/2 of SE. 1/4, SW. 1/4 of SE. 1/4 and S. 1/2 of SW. 1/4 of section 9, township 2 south, range 6 west, San Bernardino meridian, with other lands not described in the bill herein, and in no wise involved in this suit. But as to the said patent, and the lands thereof, these defendants allege that this suit is barred by the provisions of the act of Congress approved on March 2d, 1896, entitled "An act to provide for the extension of the time within which suits may be brought to vacate and annul land patents, and for other purposes," to which reference is made, as printed in the U. S. Statutes 1895-1896, page 42 and following.

Par. 21. Allege that on October 7th, 1891, the proper officers of the United States duly and lawfully issued a patent, bearing that date, unto the defendant Southern Pacific Railroad Company, conveying all of section 5, township 2 south, range 6 west, San Bernardino meridian, with other lands not described in the bill of complaint herein, and in nowise involved in this suit; and deny that the said section contains any tracts, or subdivisions known or designated as lots 1, 2, 3, 4, 5 or 6. But as to the said patent, and the lands thereof, these defendants allege that this suit is barred by the provisions of the act of Congress approved on

March 2d, 1896, referred to in the next preceding paragraph of this answer.

Sub. IV.

Par. 22. Allege that, including all the lands described in the bill of complaint herein, the defendant Southern Pacific Railroad Company has not received the full quantity of land provided in the grant made to that company by the said act of March 3d, 1871.

Sub. V.

Par. 23. Further answering, these defendants allege, that on April 1st, 1875, the defendant Southern Pacific Railroad Company made, executed and delivered unto D. O. Mills and Lloyd Tevis, as trustees, a mortgage bearing that date, conveying to them all the lands described in the bill of complaint herein by legal subdivisions, as sections or parts of sections; which mortgage was given to secure the payment of negotiable mortgage bonds to be issued and sold by the said company. That prior to March 3d, 1887, the said company duly issued, sold and delivered negotiable bonds secured by the said mortgage, of the face value of $39,285,000, to bona fide purchasers thereof, who purchased the same without notice of any claim or demand of the United States to, or respecting any of the said lands; and each and all of the said purchasers paid full value for the said bonds, and $10,000,000 in value of the said bonds are, and on March 2d, 1896, were, outstanding and unpaid in the hands of such bona fide purchasers. Prior to the commencement of

this suit the defendant Homer S. King duly succeeded and was substituted for the said Lloyd Tevis, as such trustee.

Par. 24. Allege that the Central Trust Company of New York is, and on August 25th, 1888, was, a corporation duly incorporated and organized under the laws of the State of New York; that on the last-mentioned date the Southern Pacific Railroad Company made, executed and delivered to the said Central Trust Company of New York, a further mortgage or deed of trust, conveying all the lands referred to in the next preceding paragraph hereof, given to secure the payment of negotiable mortgage bonds to be issued and sold. That prior to the year 1893, the defendant Southern Pacific Railroad Company duly issued, sold and delivered negotiable bonds secured by the said mortgage or deed of trust, of the face value of $11,375,000, to bona fide purchasers thereof, who purchased the same in good faith, without notice of any claim or demand of the United States to, or respecting, any of the said lands; and each and all of such purchasers paid full value for the said bonds, and were and are bona fide purchasers of the same.

Par. 25. Allege that on September 15th, 1893, the defendant Southern Pacific Railroad Company made, executed and delivered unto the said Central Trust Company of New York a further mortgage or deed of trust, conveying all the lands referred to in the next preceding paragraph hereof, given to secure the payment of negotiable mortgage bonds to be issued and

sold. That prior to March 2d, 1896, the defendant Southern Pacific Railroad Company duly issued, sold and delivered negotiable bonds secured by this last-mentioned mortgage or deed of trust, of the face value of more than $10,000,000, to bona fide purchasers thereof, who purchased the same in good faith, without notice of any claim or demand of the United States to, or respecting, any of the said lands; and each and all of the said purchasers paid full value for the said lands, and were and are bona fide purchasers of the same.

Sub. VI.

Par. 26. Further answering, these defendants allege that Exhibit "A," attached to and made part of this answer, sets forth a true and correct statement of sales made by the defendant Southern Pacific Railroad Company, of the lands described in the bill of complaint herein; that each of the sales set forth in Exhibit "A" was made to a bona fide purchaser, who purchased in good faith and for full value of the land at the time of purchase, without notice or knowledge that the United States had, or claimed to have, any right, title or interest whatsoever, in or to the land purchased, or any part thereof; and each of such purchasers believe, sincerely and in good faith, that in making such purchase he was acquiring the true title to the lands so purchased.

Sub. VII.

Par. 27. Further answering, these defendants say that they have no knowledge or information as to

whether the persons, other than these defendants, named in the bill of complaint herein as defendants to this suit, or any of them, have or claim to have an interest in some or any of the lands described in the said bill, by virtue of the said act of March 3d, 1871, or otherwise and on that ground deny the allegation of the said bill as to the claims of such defendants; but admit it to be true, as set forth in the said bill, that these defendants claim an interest in the said lands, of nature and extent hereinbefore set forth.

Sub. VIII.

Par. 28. And these defendants jointly and severally deny all and all manner of matter, cause or thing in the complainant's said bill contained, material or necessary for them, or any of them, to make answer to, and not herein well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of these defendants, or any of them. All of which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court may direct; and these defendants pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

WM. SINGER, Jr.,
Attorney for the Defendants Named.

WM. F. HERRIN,
Counsel for the Defendants Named.

State of California,
City and County of San Francisco. } ss.

J. L. Willcutt makes solemn oath and says: I am Secretary of the Southern Pacific Railroad Company, the defendant named in the foregoing answer. I have read the foregoing answer and know the contents thereof, and the same is true of my knowledge, except as to the matters and things therein stated on information and belief, and as to such matters I verily believe the answer to be true.

J. L. WILLCUTT.

Subscribed and sworn to before me on August first, 1901.

[Seal] JAMES L. KING,
Notary Public in and for the City and County of San Francisco, State of California.

Exhibit "A."

Contract No. 10,749.

Issued May 18th, 1891. To H. S. Button.

For lot 3, sec. 33, T. 1 S., R. 5 W., S. B. M.

Forty-one 52/100 (41.52) acres.

Agreed pur. price, $415.20. Pur. price paid, $415.20. Int. paid, $116.25.

Deed issued May 30, 1896, to J. P. Kiler.

Present owner of contract: ———.

Patent No. 25. Issued Aug. 15, 1894, for 41.52 acres of land described above.

Contract No. 10,762.

Issued May 27, 1891. To H. S. Button.

For SE. 1/4 of NE. 1/4 and lots 4 and 5, sec. 33, T. 1 S., R. 5 W., S. B. M. (This lot 5 is duplicated in the bill of complaint, as "NE. 1/4 of SE. 1/4.")

Ninety 89/100 (90.89) acres.

Agreed pur. price, $908.90. Pur. price paid, $908.90. Int. paid, $149.50.

Deed issued July 8th, 1896, to H. S. Button.

Present owner of contract: ———.

Patent No. 25. Issued Aug. 15, 1894, for 90 89/100 acres of land described above.

Contract No. 10,751.

Issued May 18th, 1891, to Miss Bertha Choate.

For lots 11 and 12, sec. 33, T. 1 S., R. 5 W., S. B. M.

Fifty-three 67/100 (53.67) acres.

Agreed pur. price, $536.70. Pur. price paid, $536.70. Int. paid, $237.21.

Deed issued May 22, 1900, to Walter A. Choate.

Present owner of contract: ———.

Patent No. 25, issued Aug. 15, 1894, for 53.67 acres of land described above.

Contract No. 10754.

Issued May 18th, 1891. To John E. Campbell.

For lot 3, sec. 35, T. 1 S., R. 5 W., S. B. M.

Forty-three 55/100 (43.55) acres.

Agreed pur. price, $435.50. Pur. price paid, $435.50. Int. paid, $187.04.

Deed issued March 27, 1900, to Calvin Ogburn.

Present owner of contract: ———.

Patent No. 25. Issued Aug. 15, 1894, for 43.55 acres of land described above.

Contract No. 10809.

Issued Sept. 10th, 1891. To Martin Comstock.

For lots 1 and 2, and S. 1/2 of NE. 1/4, sec. 1, T. 2 S., R. 6 W., S. B. M.

(Lots 1 & 2 are described twice in the bill of complaint.)

One hundred and fifty-nine 92/100 (159.92) acres.

Agreed pur. price, $399.80. Pur. price paid, $79.96. Int. paid, $134.34.

Deed issued ——— to ———.

Present owner of contract Martin Comstock (now deceased).

Patent No. 25. Issued Aug. 15, 1894, for 159.92 acres of land described above.

Contract No. 11836.

Issued Oct. 13th, 1899. To Michael Craig.

For lots 3 and 4 and S. 1/2 of NW. 1/4, sec. 1, T. 2 S., R. 6 W., S. B. M.

One hundred and thirty-nine 81/100 (139.81) acres.

Agreed pur. price, $349.52. Pur. price paid, $69.90. Int. paid, $39.14.

Deed issued ——— to ———.

Present owner of contract, Michael Craig.

Patent No. 25. Issued Aug. 15, 1894, for 139.81 acres of land described above.

Contract No. 2898.

Issued Nov. 12, 1883. To O. J. Simpkins.

For lot 1, SW. 1/4 of SE. 1/4, S. 1/2 of SW. 1/4, sec. 9, T. 2 S., R. 6 W., S. B. M.

One hundred and fifty-five 73/100 (155.73) acres.

Agreed pur. price, $467.19. Pur. price paid, $467.19. Int. paid, $135.88.

Deed issued Feby. 1, 1889, to A. G. Patton.

Present owner of contract: ———.

Patent No. 9. Issued Jany. 9, 1885, for 155.73 acres of land described above.

Contract No. 2897.

Issued Nov. 12th, 1883. To A. G. Patton.

For lots 3, 7 and 8 and N. 1/2 of SE. 1/4, sec. 9, T. 2 S., R. 6 W., S. B. M.

One hundred and fifty-six 29/100 (156.29) acres.

Agreed pur. price, $468.87. Pur. price paid, $468.87. Int. paid, $136.40.

Deed issued Feb. 1, 1889, to A. G. Patton.

Present owner of contract: ———.

Patent No. 9. Issued Jany. 9, 1895, for 156.29 acres of land described above.

Contract No. 2896.

Issued Nov. 12th, 1883. To H. J. Stevenson.

For lots 9 and 10, sec. 9, T. 2 S., R. 6 W., S. B. M.

Sixty-seven 02/100 (67.02) acres.

Agreed pur. price, $201.06. Pur. price paid, $201.06. Int. paid, $58.49.

Deed issued Feb. 1, 1889, to A. G. Patton.

Present owner of contract: ———.

Patent No. 9. Issued Jany. 9, 1885, for 67.02 acres of land described above.

Contract No. 11422.

Issued April 7, 1896. To Mrs. Mary E. Comstock.

For NW. 1/4 of SE. 1/4, sec. 1, T. 2 S., R. 6 W., S. B. M. (This tract is described twice in the bill of complaint.)

Forty 00/100 (40.00) acres.

Agreed pur. price, $100.00. Pur. price paid, $100.00. Int. paid, ———.

Quitclaim deed issued May 2, 1896, to Mary E. Comstock.

Present owner of contract: ———.

Patent No. ———. Issued ———, for ——— acres of land described above.

Contract No. 10193.

Issued Oct. 23, 1889. To Charles E. Mosher.

For lots 1 and 2 and N 1/2 of NE. 1/4, sec. 17, T. 2 S., R. 6 W., S. B. M.

One hundred and thirty-one 09/100 (131.09) acres.

Agreed pur. price, $786.54. Pur. price paid, $786.54. Int. paid, $223.31.

Deed issued Nov. 21, 1894, to Charles E. Mosher.

Present owner of contract: ———.

Patent No. 25. Issued Aug. 15, 1894, for 131.09 acres of land described above.

Contract No. 10123.

Issued July 5, 1889. To Mrs. Kate Bryant McVay.

For lots 3, 4, 5, and 7, S. 1/2 of NW. 1/4, sec. 17, T. 2 S., R. 6 W., S. B. M.

One hundred and seventy-nine 78/100 (179.78) acres.

Agreed pur. price, $1078.68. Pur. price paid, $1078.68. Int. paid, $375.72.

Deed issued Sept. 25, 1895, to Mrs. Kate Bryant McVay.

Present owner of contract: ———.

Patent No. 25. Issued Aug. 15, 1894, for 179.78 acres of land described above.

Contract No. 10566.

Issued Nov. 10, 1890. To Adam Willhart.

For lot 1, sec. 19, T. 2 S., R. 6 W., S. B. M.

Eight 11/100 (8.11) acres.

Agreed pur. price, $81.10. Pur. price paid, $81.10. Int. paid, ———.

Deed issued Oct. 20, 1894, to Adam Willhart.

Present owner of contract: ———.

Patent No. 25. Issued Aug. 15, 1894, for 8.11 acres of land described above.

Contract No. 3512.

Issued May 2nd, 1884. To A. J. Stalder and J. M. Clyman.

For all of sec. 5, T. 2 S., R. 6 W., S. B. M.

(The bill of complaint described lots 1, 2, 3, 4, 5, and 6, only, of this sec.; but this sec. contains no such lots.)

——— acres.

Agreed pur. price, $———. Pur. price paid, $———. Int. paid, $———.

Deed issued Dec. 2d, 1891, to A. J. Stalder and J. M. Clyman.

Present owner of contract: ———.

Patent No. 18, Issued Oct. 7th, 1891, for all of sec. acres of land described above.

[Endorsed]: No. 979. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal., So. Division. United States of America v. Southern Pacific Railroad Co. et al. Separate Answer of the Southern Pacific Railroad Co., Central Trust Co. of N. Y. et al. Filed Aug. 3, 1901, Wm. M. Van Dyke, Clerk. Wm. Singer, Jr., N. E. corner Second and Mission Streets, San Francisco, Cal., Atty for Defendants.

In the United States Circuit Court, Southern District of California, Ninth Circuit.

UNITED STATES OF AMERICA, Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY and Others, Defendants.

No. 979.

Replication of the United States to the Answers of Southern Pacific Railroad Company et al.

This replicant, saving and reserving to himself all and all manner of advantage of exception to the manifold

insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this replicant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this replicant is, and will be, ready to aver and prove as this honorable Court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

JOSEPH H. CALL,
Special Asst. U. S. Atty., and of Counsel for Complainant.

[Endorsed]: No. 979. In the U. S. Circuit Court Southern Dist. of Cal. United States of America, Complainant, v. Southern Pacific Railroad Co. et al., Defendants. Joseph H. Call, Special Asst. U. S. Atty. Served on Counsel for Defendants August 17, 1901. Joseph H. Call. Filed Aug. 19, 1901. Wm. M. Van Dyke, Clerk.

At a stated term, to wit, the July Term, A. D. 1901, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division, held at the courtroom, in the city of Los Angeles, on Tuesday, the third day of September, in the year of our Lord one thousand nine hundred and one. Present: The Honorable ERSKINE M. ROSS, Circuit Judge.

UNITED STATES OF AMERICA,
Complainants,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.
Number 979.

Order Dismissing Cause as to Certain Lands.

On this third day of September, 1901, in open court, upon motion of Joseph H. Call, Esquire, Special United States Attorney, and good cause appearing therefor, it is ordered that the bill of complaint herein be dismissed, without prejudice, as to the following described lands, and no others, to wit: Lots one (1), two (2), three (3), four (4), five (5), and six (6), of section five (5), township two (2) south, range six (6) west, San Bernardino base and meridian.

[Endorsed]: No. 979. U. S. Circuit Court, Ninth Circuit, Southern District of California, Southern Divi-

sion. United States of America v. Southern Pacific Railroad Company et al. Copy Order Dismissing Cause as to Certain ands. Filed July 13, 1903. Wm. M. Van Dyke, Clerk.

In the United States Circuit Court, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA,
Complainant,
v.
SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.

Stipulation and Order Allowing I. N. Van Nuys to File Amendment to His Answer.

It is hereby stipulated that an order be entered herein allowing the respondent, I. N. Van Nuys, to file an amendment to his answer, heretofore filed herein, to the effect that on February 1st 1889, and up to July 24, 1899, A G. Patton was a citizen of the United States, and that on July 24, 1899, I. N. Van Nuys was, and ever since has been and still is, a citizen of the United States.

June 30th, 1902.

JOSEPH H. CALL.
Solicitor for Complainant.
GRAVES, O'MELVENY & SHANKLAND,
Solicitors for Respondent, I. N. Van Nuys.

On the foregoing stipulation it is hereby ordered that the respondent, I. N. Van Nuys, be allowed to file an

amendment to his answer, heretofore filed herein, pleading the fact that on February 1st, 1889, A. G. Patton was, and up to July 24, 1899, remained a citizen of the United States, and that on July 24, 1899, I. N. Van Nuys was and still is a citizen of the United States.

Dated July 1st, 1902.

ROSS,
Circuit Judge.

[Endorsed]: Original. No. 979. In the United States Circuit Court, Ninth Circuit, Southern District of California. United States of America, Complainant, v. Southern Pacific Railroad Co. et al., Defendants. Stipulation allowing I. N. Van Nuys to file an amendment to his answer and order allowing amendment. Filed Jul. 1, 1902. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Graves, O'Melveny & Shankland.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,
Complainant
vs.
SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Respondents.

Amendment to Answer of Respondent, I. N. Van Nuys.

The respondent, I. N. Van Nuys, now and at all times hereinafter reserving all manner of benefit and advan-

tage to himself of exception to the many errors and insufficiencies in said bill contained, for an answer to his answer to the bill of complaint herein, or unto so much thereof or such parts thereof as this respondent is advised is material for him to make answer unto, by leave of the Court first had and maintained, answers and says for such amendment:

I.

Insert immediately after paragraph IV of the further answer to the bill of complaint filed by said respondent, and on page 8 thereof, the following: "That on February 1st, 1889, and up to July 24, 1899, A. G. Patton was a citizen of the United States, and that on July 24, 1899, this respondent, I. N. Van Nuys, was, and ever since has been, and still is a citizen of the United States."

All of which matters and things this respondent is ready to aver and prove as this court shall direct, and prays that it be declared by the judgment of this Court that the title of this respondent to lots 1, 3, 7, 8, 9, and 10, and the south half of the southeast quarter, the southwest quarter of the southeast quarter, and the north half of the southeast quarter of section 9, township 2 south, range 6 west, San Bernardino base and meridian, is good and valid, and that the same was confirmed by said acts of Congress hereinbefore mentioned; and that this respondent be awarded his costs herein most wrongfully sustained.

GRAVES, O'MELVENY & SHANKLAND,
Solicitors for Respondent.

[Endorsed]: Original. No. 979. In the United States Circuit Court, Ninth Circuit, Southern District of California. The United States of America, Complainant, vs. Southern Pacific Railroad Co. et al., Defendants. Amendment to Answer of Respondent I. N. Van Nuys. Received copy of the within this 1 day of July, 1902. Jos. H. Call, Attorney for Defendant. Filed July 1, 1902, Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Graves, O'Melveny & Shankland, Attorneys for I. N. Van Nuys.

In the Circuit Court of the United States, Ninth Judicial Circuit, Southern District of California, Southern Division.

THE UNITED STATES, Complainants,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY et al., Defendants.
No. 979.

Enrollment.

The complainants filed their bill of complaint herein on the 28th day of February, 1901, which is hereto annexed.

A subpoena to appear and answer in said cause was thereupon on said 28th day of February, 1901, issued, returnable on the 1st day of April, 1901, which is hereto annexed.

On the 1st day of March, 1901, the Court made and entered an order herein that the defendants the Central Trust Company of New York, as trustees, D. O. Mills and Homer S. King, as trustees, appear and demur, plead or answer in this court on or before the 1st day of May, 1901, which order is hereto annexed.

The defendants I. N. Van Nuys and Riverside Vineyard Company appeared herein on the 18th day of March, 1901, by Messrs. Graves, O'Melveny & Shankland, their solicitors.

On the 18th day of March, 1901, the answer of the defendant I. N. Van Nuys to the bill of complaint was filed herein, and is hereto annexed.

On the 18th day of March, 1901, the answer of defendant the Riverside Vineyard Company, a corporation, to the bill of complaint, was filed herein, and is hereto annexed.

The defendants Emma S. C. West and estate of Frank H. Hinman appeared herein on the 27th day of March, 1901, by J. W. Swanwick, Esq., their solicitor.

On the 30th day of March, 1901, the defendants Charles H. Colwell and Russ Avery appeared herein by Russ Avery, Esq., their solicitor.

On the 1st day of April, 1901, the defendant Walter A. Choate appeared herein in propria persona.

The defendants William H. Davis, J. P. Kyler and H. S. Button appeared herein on the 6th day of April, 1901, by Russ Avery, Esq., their solicitor.

The defendants Southern Pacific Railroad Company, Central Trust Company of New York (as trustee), D.

O. Mills and Homer S. King (as trustees), appeared herein on the 6th day of May, 1901, by Wm. Singer, Jr., Esq., their solicitor, and by Wm. F. Herrin, Esq., of counsel.

On the 7th day of May, 1901, the answer of defendant H. S. Button to the bill of complaint was filed herein, and is hereto annexed.

On the 7th day of May, 1901, the answer of defendants Charles H. Colwell and Russ Avery to the bill of complaint was filed herein, and is hereto annexed.

On the 7th day of May, 1901, the answer of defendant J. P. Kyler to the bill of complaint was filed herein, and is hereto annexed.

On the 24th day of May, 1901, the answer of defendant William H. Davis to the bill of complaint was filed herein, and is hereto annexed.

On the 11th day of June, 1901, the answer of defendant Frank Walker to the bill of complaint was filed herein, and is hereto annexed.

On the 9th day of July, 1901, Joseph H. Call, Esq., Special Assistant United States Attorney, appeared herein as solicitor for complainants.

On the 3d day of August, 1901, the answer of defendants Southern Pacific Railroad Company, Central Trust Company of New York (as trustee), D. O. Mills and Homer S. King (as trustees) to the bill of complaint was filed herein, and is hereto annexed.

The replication of complainants to the answers of defendants Southern Pacific Railroad Company et al.,

was filed herein on the 19th day of August, 1901, and is hereto annexed.

On the 3d day of September, 1901, the Court made and entered an order herein, dismissing this cause as to certain of the lands described in the bill of complaint, a copy of which order is hereto annexed.

On the 1st day of July, 1902, the Court made, filed and entered herein an order allowing the defendant I. N. Van Nuys to file an amendment to his answer heretofore filed herein, which order is hereto annexed.

On the 1st day of July, 1902, the amendment to the answer of defendant I. N. Van Nuys to the bill of complaint was filed herein, and is hereto annexed.

Testimony was thereafter taken on behalf of the respective parties, and filed in the clerk's office of said circuit court.

On the 29th day of September, 1902, being a day in the July term, A. D. 1902, of said Circuit Court, pursuant to the stipulation on file herein, and on motion of Joseph H. Call, Esq., of counsel for complainants, said cause was submitted to the Court for its consideration and decision before Honorable Erskine M. Ross, Circuit Judge, upon briefs which were thereafter filed and the Court having duly considered the same, and being fully advised in the premises, thereafter, on the 15th day of June, 1903, being a day in the January term, A. D. 1903, of said Circuit Court, ordered that a decree be entered herein as prayed for by the complainant in respect to such of the lands in controversy as were patented to the defendant railroad company

and remain unsold, and in respect to such of the lands as were so patented to the defendant railroad company and by it sold to bona fide purchasers, that a decree be entered confirming the title of said bona fide purchasers to such tracts and judgment in favor of the complainant and against the defendant railroad company at the rate of one dollar and twenty-five cents per acre for such of the tracts so patented and sold, and accordingly, on the 13th day of July, 1903, a final decree was signed, filed and entered herein, and is hereto annexed.

In the United States Circuit Court, Ninth Circuit, Southern District of California.

THE UNITED STATES, Complainant,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY et. al, Defendants.
No. 979.

Decree.

This cause came on for final decree in open court this 13th day of July, A. D. 1903.

The complainant, the United States, appeared by Mr. Joseph H. Call, special assistant United States attorney; the defendants, Southern Pacific Railroad Company (a corporation), Central Trust Company of New York (a corporation), and D. O. Mills and Homer S.

King as trustees, appeared by Mr. William F. Herrin, their counsel, and Mr. William Singer, Junior, their attorney; defendants I. N. Van Nuys and Riverside Vineyard Company (a corporation), appeared by Messrs. Graves, O'Melveny & Shankland, their attorneys and counsel; defendant Frank Walker appeared by Messrs. Goodrich & McCutchen, his attorneys; defendant Emma S. C. West, appeared by Mr. J. W. Swanwick, her attorney; defendant Walter Choate appeared personally; defendants Charles H. Colwell, Russ Avery, William H. Davis, J. P. Kyler and H. S. Button appeared by Mr. Russ Avery, their attorney, and filed their answers to the bill.

Issue having been taken and the cause having been duly argued and submitted and the court being duly advised in the premises, adjudged as follows:

Section 1. The Court finds and determines that all of the lands in this decree hereinafter described, were sub judice at the time the grant to defendant Southern Pacific Railroad Company, of March 3, 1871, took effect, and said lands were at that time claimed by persons other than said railroad company, and were excepted from the grant to said company by said act of Congress, and that said lands were erroneously, by mistake and improvidently, patented to defendant Southern Pacific Railroad Company by the United States.

Section 2. It is further ordered, adjudged and decreed that the United States, complainant herein, is the absolute owner by title in fee simple, of the following described lands and that the defendants have no

right, title, interest or estate in or to said lands, or any of them, and all patents issued by the United States to said Southern Pacific Railroad Company, in any wise affecting said lands or purporting to convey the same, are hereby vacated and annulled, said lands being described as follows, to wit:

Lots five, six, seven, eight and nine of section twenty-five, township one south, range five west, S. B. M., and the southeast quarter of southeast quarter, and lots eight, nine, ten and eleven of section thirty-one, township one south, range five west; also lots six, seven and eight, and the north half of the southwest quarter, and the southwest quarter of the southwest quarter, in section thirty-three, township one south, range five west, S. B. M.; also lots one and two of section thirty-five, township one south, range five west, S. B. M., also the southwest quarter of section one, township two south, range six west, S. B. M.

Section 3. It is further ordered, adjudged and decreed, that defendant J. P. Kiler (sometimes written Kyler) is a bona fide purchaser of and from defendant Southern Pacific Railroad Company, for lot three, section thirty-three, township one south, range five west, S. B. M., containing forty-one and fifty-two hundredths acres, and that defendant Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-five cents per acre, money realized by said defendant from the sale of said land, and it is further ordered, adjudged and decreed that the title of said defendant Kyler, his heirs and assigns, is hereby confirmed in and to the said land.

Section 4. It is further ordered, adjudged and decreed that defendant H. S. Button is a bona fide purchaser from said Southern Pacific Railroad Company, of and to the southeast quarter of the northeast quarter and lots four and five of section thirty-three, township one south, range five west, S. B. M., containing ninety and eighty-nine hundredths acres, and that defendant Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-five cents per acre for said land, as money received by said company from the sale thereof, and it is further ordered, adjudged and decreed that the title of said Button, his heirs and assigns, is hereby confirmed in and to the said land.

Section 5. It is further ordered, adjudged and decreed that defendant Walter A. Choate is a bona fide purchaser from said Southern Pacific Railroad Company, of and to lots eleven and twelve, section thirty-three, township one south, range five west, S. B. M., containing fifty-three and sixty-seven hundredths acres, and that defendant Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-five cents per acre for said land, as money received by said company from the sale thereof, and it is further ordered, adjudged and decreed that the title of said Choate, his heirs and assigns, is hereby confirmed in and to the said land.

Section 6. It is further ordered, adjudged and decreed that defendant Calvin Ogburn, is a bona fide pany, of and to lot three, section thirty-five, township purchaser from said Southern Pacific Railroad Com-

one south, range five west, S. B. M., containing forty-three and fifty-five hundredths acres, and that defendant Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-five cents per acre for said land, as money received by said company from the sale thereof, and it is further ordered, adjudged and decreed that the title of said Ogburn, his heirs and assigns, is hereby confirmed in and to the said land.

Section 7. It is further ordered, adjudged and decreed that defendant Martin Comstock (now deceased) is a bona fide purchaser from said Southern Pacific Railroad Company, of and to lots one and two, and the south half of the northeast quarter of section one, township two south, range six west, S. B. M., containing one hundred and fifty-nine and ninety-two hundredths acres, and that defendant Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-five cents per acre for said land, as money received by said company from the sale thereof.

Section 8. It is further ordered, adjudged and decreed that Michael Craig is a bona fide purchaser from said Southern Pacific Railroad Company, of and to lots three and four and the south half of the northwest quarter of section one, township two south, range six west, S. B. M., containing one hundred and thirty-nine and eighty-one hundredths acres, and that defendant Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-

five cents per acre for said land, as money received by said company from the sale thereof.

Section 9. It is further ordered, adjudged and decreed, that A. G. Patton (now deceased) is a bona fide purchaser from said Southern Pacific Railroad Company, of and to lots one, three, seven, eight, nine and ten, and the southwest quarter of the southwest quarter, and south half of southwest quarter, and north half of southeast quarter of section nine, township two south, range six west, S. B. M., containing three hundred and seventy-nine and four-hundredths acres, and that defendant, Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-five cents per acre for said land, as money received by said company from the sale thereof, and it is further ordered, adjudged and decreed that the title of defendant I. N. Van Nuys, grantee of said A. G. Patton, his heirs and assigns, is hereby confirmed in and to the said lands.

Section 10. It is further ordered, adjudged and decreed, that Mary E. Comstock, is a bona fide purchaser from said Southern Pacific Railroad Company, of and to the northwest quarter of the southeast quarter of section one, township two south, range six west, S. B. M., containing forty acres, and that defendant Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-five cents per acre for said land, as money received by said company from the sale thereof.

Section 11. It is further ordered, adjudged and decreed, that Charles E. Mosher, is a bona fide purchaser

from said Southern Pacific Railroad Company, of and to lots one and two, and the north half of the northeast quarter of section seventeen, township two south, range six west, S. B. M., containing one hundred and thirty-one and nine-hundredths acres, and that defendant Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-five cents per acre for said land, as money received by said company from the sale thereof.

Section 12. It is further ordered, adjudged and decreed, that defendant Kate Bryant McVay, is a bona fide purchaser from said Southern Pacific Railroad Company, of and to lots three, four, five and seven, and the south half of the northwest quarter of section seventeen, township two south, range six west, S. B. M., containing one hundred and seventy-nine and seventy-eight hundredths acres, and that defendant Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-five cents per acre for said land, as money received by said company from the sale thereof, and it is further ordered, adjudged and decreed that the title of said McVay, her heirs and assigns, is hereby confirmed in and to the said land.

Section 13. It is further ordered, adjudged and decreed, that defendant Adam Willhart, is a bona fide purchaser from said Southern Pacific Railroad Company, of and to lot one, section nineteen, township two south, range six west, S. B. M., containing eight and eleven hundredths acres, and that defendant Southern Pacific Railroad Company is indebted to the United States in the

sum of one dollar and twenty-five cents per acre for said land, as money received by said company from the sale thereof, and it is further ordered, adjudged and decreed that the title of said Willhart, his heirs and assigns, is hereby confirmed in and to the said land.

Section 14. It is further ordered, adjudged and decreed, that the United States have and recover of and from the defendant Southern Pacific Railroad Company, the sum of one thousand five hundred and eighty-four dollars and twenty-two cents ($1,584.22), with interest thereon at the rate of seven per centum per annum, from date of this decree, together with the plaintiff's reasonable costs herein, taxed at eighty and 70-100 (80.70-100) dollars, and that execution issue against said Southern Pacific Railroad Company for said sums.

ROSS,
Circuit Judge.

Decree entered and recorded July 13th, 1903.

WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 979. In the United States Circuit Court, Ninth Circuit, Southern District of California. The United States vs. Southern Pacific Railroad Company et al., Decree. Filed Jul. 13, 1903. Wm. M. Van Dyke, Clerk.

Whereupon said bill of complaint, subpoena, order that defendants, the Central Trust Company of New York, as trustee, D. O. Mills and Homer S. King, as trustees, appear and demur, plead or answer in this court

on or before the 1st day of May, 1901, answer of the defendant I. N. Nan Nuys to the bill of complaint, answer of defendant, the Riverside Vineyard Company, a corporation, to the bill of complaint, answer of defendant, H. S. Button, to the bill of complaint, answer of defendants, Charles H. Colwell and Russ Avery, to the bill of complaint, answer of defendant J. P. Kyler to the bill of complaint, answer of defendant William H. Davis to the bill of complaint, answer of defendant Frank Walker to the bill of complaint, answer of defendants Southern Pacific Railroad Company, Central Trust Company of New York (as trustee), D. O. Mills and Homer S. King (as trustees) to the bill of complaint, replication of complainants to the answers of defendants Southern Pacific Railroad Company et al., copy order dismissing this cause as to certain lands described in the bill of complaint, order allowing defendant I. N. Van Nuys to file an amendment to his answer heretofore filed herein, amendment to the answer of defendant I. N. Van Nuys to the bill of complaint, and said final decree are hereto annexed, said final decree being duly signed, filed and enrolled pursuant to the rules of said Circuit Court.

Attest, etc.

[Seal] WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 979. In the Circuit Court of the United States Ninth Judicial Circuit, for the Southern District of California, Southern Division. The United States vs. Southern Pacific Railroad Company et al. Enrolled Papers. Filed July 13th, 1903. Wm. M. Van

Dyke, Clerk. Recorded Decree Register Book No. 3, page 67.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES, Complainant,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY et al., Defendants.

Opinion.

The views expressed by this court in the case of Southern Pacific Railroad Company vs. Brown et al., 68 Fed. Rep. 333, and in the case of United States vs. Southern Pacific Railroad Company et al., 117 Fed. Rep. 544, applied to the record in the present case, require a decree as prayed for by the complainant in respect to such of the lands in controversy as were patented to the defendant railroad company and remain unsold, and in respect to such of the lands as were so patented to the defendant railroad company and by it sold to bona fide purchasers, a decree confirming the title of such bona fide purchasers to such tracts and judgment in favor of the complainant against the defendant railroad company at the rate of one dollar and twenty-five cents per acre for such of the tracts so patented and sold. It is unnecessary to repeat the views expressed in

the cases cited. They will be found fully stated in the opinions delivered at the time of the decisions.

The counsel for the respective parties can, no doubt, agree upon a decree that meets the views of the court above indicated, and a decree in accordance therewith will be entered; otherwise I shall have to go through the evidence in respect to the various sales in order to enter the proper decree.

ROSS,
Circuit Judge.

[Endorsed]: No. 979. U. S. Circuit Court, Ninth Circuit, Southern District of California, Southern Division. The United States vs. Southern Pacific Railroad Company et al. Opinion. Filed Jun. 15, 1903, Wm. M. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE UNITED STATES,
Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, and Others,
Defendants.
No. 979.

Testimony.

Testimony taken on behalf of the plaintiff, at the United States Court Building, in the city of Los Angeles,

California, before A. M. Cates, special examiner and stenographer, by consent of parties, on April 1, 1902.

Present: Joseph H. Call, Esq., special assistant United States attorney, and William Singer, Esq., Jr., attorney for defendants.

Thereupon the following proceedings were had: WILLIAM M. VAN DYKE being first duly sworn on behalf of plaintiff, testified as follows, in answer to the following interrogatories by Mr. Call.

Q. No. 1. Mr. Van Dyke, you are the clerk of the United States Circuit Court for the Southern District of California? A. Yes, sir.

Q. No. 2. And you have in your custody as clerk the record in the case of Southern Pacific Railroad Company v. Bray, and Southern Pacific Railroad Company v. Brown, numbers 10 and 9 on the docket of the Circuit Court?

A. Yes, sir, I have those records in my custody.

Q. No. 3. I will ask you to produce the following parts of the records in those cases.

Mr. SINGER.—May it be understood that I object to all the documents that you now propose offering, as irrelevant, incompetent and immaterial, without renewing the objection in each instance.

Mr. CALL.—(Continuing Q. No. 3.) Respondent's Exhibits Nos. 12, 14, 15, 13 and 2.

A. Yes, sir, I have those exhibits.

Q. No. 4. I offer in evidence Respondent's Exhibit

(Testimony of William M. Van Dyke.)

No. 12, being a certified copy of the grant to Bandini, to be now marked "Plaintiff's Exhibit No. 1."

(Paper filed by the Examiner and marked "Plaintiff's Exhibit No. 1.")

I also offer Respondent's Exhibit No. 14, being certified copy of grant and juridicial possession, to be marked "Plaintiff's Exhibit No. 2."

(Paper filed by the Examiner and marked "Plaintiff's Exhibit No. 2.")

I also offer Respondent's Exhibit 15, being copy of translation and petition to the Board of Land Commissioners, and decree of confirmation, to be marked "Plaintiff's Exhibit No. 3."

(Paper filed by the Examiner and marked "Plaintiff's Exhibit No. 3.")

I also offer Respondent's Exhibit No. 13, being decree of District Court of April 5, 1861, now marked "Plaintiff's Exhibit No. 4."

(Paper filed by the Examiner and marked "Plaintiff's Exhibit No. 4.")

I also offer Respondent's Exhibit No. 2, being copy of decision of commissioner of General Land Office, of May 13, 1876, in the matter of Reynolds' Survey.

(Paper filed by the Examiner and marked "Plaintiff's Exhibit No. 5.")

I will request the clerk of the Circuit Court to prepare copies of these papers, to be substituted in lieu of the originals, unless there is an objection on behalf of the defendant.

(Testimony of William M. Van Dyke.)

There being no objection, Mr. Van Dyke, will you do so? A. Yes, sir.

Mr. SINGER.—I have no objections to the copies as such.

Mr. CALL.—Will you waive the signature, Mr. Singer?

Mr. SINGER.—Yes, sir, I waive the signature.

Mr. CALL.—I also offer a certified copy of the Department of the Interior of the Record containing the demand by the United States upon the Southern Pacific Railroad Company for a reconveyance of the lands sued for in this case, now marked "Plaintiff's Exhibit No. 6."

(Paper filed by the Examiner and marked "Plaintiff's Exhibit No. 6.")

Mr. SINGER.—I object to the admission of pages 1 to 10 of the instrument offered in evidence, on the ground that it is irrelevant, incompetent and immaterial, in this that those pages purport to be a certified copy of the brief of one Shirley C. Ward, but do not object to the admission of the remainder of the document, except that it is irrelevant and immaterial.

Mr. CALL.—I offer certified copy of plat of the Jurupa Rancho, as finally confirmed to Abel Stearns, surveyed by Reynolds in 1869, and approved by Surveyor General February 26, 1872, to be marked "Plaintiff's Exhibit No. 7."

(Paper filed by the Examiner and marked "Plaintiff's Exhibit No. 7.")

(Testimony of William M. Van Dyke.)

Mr. SINGER.—I object to the plat offered, on the ground that it is irrelevant and immaterial.

Mr. CALL.—I offer in evidence the field-notes of the Reynolds' Survey of 1869, now marked "Plaintiff's Exhibit No. 8."

(Paper filed by the Examiner and marked "Plaintiff's Exhibit No. 8.")

Mr. SINGER.—I object to it as irrelevant and immaterial, as the survey of the Department is not sustained by any appearance of authority shown in the field-notes to make the survey an official survey.

Mr. CALL.—I offer in evidence a letter from the Secretary of the Interior, of February 21, 1877, rejecting the Reynolds' Survey, now marked "Plaintiff's Exhibit No. 9."

(Paper filed by the Examiner and marked "Plaintiff's Exhibit No. 9.")

I offer in evidence copy of the survey of the Jurupa Rancho as surveyed by Minto in 1878, marked "Plaintiff's Exhibit No. 10."

(Paper filed by the Examiner and marked "Plaintiff's Exhibit No. 10.")

I offer patent of the United States to Abel Stearns, dated 1879, of the Jurupa Rancho, marked "Plaintiff's Exhibit No. 11."

(Paper filed by the Examiner and marked "Plaintiff's Exhibit No. 11.")

Mr. CALL.—Mr. Singer, it is stipulated as follows be-

(Testimony of William M. Van Dyke.)

tween the parties to this cause and their attorneys, to wit:

Item 1. That the defendant Southern Pacific Railroad Company is a corporation, organized and existing under and by virtue of the laws of the State of California.

Item 2. That by section 23 of the act of Congress approved on March 3d, 1871, entitled "An act to incorporate the Texas and Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," the said Southern Pacific Railroad Company was authorized to construct a line of railroad from a point at or near Tehachapi Pass by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restraints and conditions, as were granted to the said Southern Pacific Railroad Company by the act of Congress approved on July 27th, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Kansas to the Pacific Coast."

Item 3. That each of the acts of Congress mentioned in "Item 2" hereof, is admitted in evidence by reference to the same as published, respectively, in volume 14, pages 292 and following, and volume 16, pages 573 and following, of the United States Statutes at large.

Item 4. That the said Southern Pacific Railroad Company duly accepted the terms, conditions and imposi-

(Testimony of William M. Van Dyke.)

tions of the said act of Congress hereinbefore referred to as approved on March 3d, 1871.

Item 5. That on April 3d, 1871, the said Southern Pacific Railroad Company filed in the office of the Commissioner of the General Land Office, its map of general route of the railroad from Tehachapi Pass by the way of Los Angeles to the Colorado River at Fort Yuma.

Item 6. That on April 21st, 1871, the Commissioner of the General Land Office, under direction of the Secretary of the Interior, withdrew all odd sections of land within twenty miles on each side of the line of road shown on the said general route map, and not embraced by any exception from the grant intended to be made unto the said Southern Pacific Railroad Company by the said act of Congress of March 3d, 1871, from pre-emption and homestead entry, sales and location so far as empowered so to do.

Item 7. That within the time allowed therefore, the said Southern Pacific Railroad Company constructed its railroad in a good, substantial and workmanlike manner, as near as may be along the line shown on the said general route map, from Tehachapi Pass by way of Los Angeles to the Colorado River at Fort Yuma; which railroad was duly examined by Commissioners appointed by the President of the United States, and was duly accepted by the said Commissioners and the proper officers of the United States.

Item 8. That the said Southern Pacific Railroad Com-

(Testimony of William M. Van Dyke.)

pany duly filed, and the Secretary of the Interior approved, in five several sections, maps of the definite location of its said railroad as constructed and accepted; and all the lands involved in this suit are within twenty miles of the said railroad as definitely located, constructed, and shown on the said map of general route.

Item 9. That the map of definite location of the section of said railroad which is opposite and coterminous with the lands involved in this suit, was filed and approved as aforesaid, during the year 1874; and during the same year that section of railroad, as constructed and equipped, was accepted by the United States, as aforesaid.

Item 10. That on January 9th, 1885, the proper officers of the United States issued and delivered a patent, in regular form, bearing that date, purporting to convey unto the said Southern Pacific Railroad Company the legal title in and to lots 1, 3, 7, 8, 9, and 10, N 1/2 of S. E. 1/4, S. W. 1/4 of S. E. 1/4 and S. 1/2 of S. W. 1/4 of section 9, township 2 south, range 6 west, San Bernardino meridian, as lands granted to the said Southern Pacific Railroad Company by the said act of Congress of March 3d, 1871; together with other lands not described in the bill of complaint herein.

Item 11. That on August 15th, 1894, the proper officers of the United States issued and delivered a patent, in regular form bearing that date, purporting to convey unto the said Southern Pacific Railroad Company, as lands granted to it by the said act of Congress of March

(Testimony of William M. Van Dyke.)

3d, 1871, the legal title in and to the following lands, with other lands not described in the bill of complaint herein, to wit: Lots 5, 6, 7, 8, and 9 of section 25; S. E. 1/4 of S. E. 1/4 and lots 8, 9, 10 and 11 of section 31; lots 3, 4, 5, (lot 5 being the N. E. 1/4 of S. E. 1/4) 6, 7, 8, 11 and 12, S. E. 1/4 of N. E. 1/4, N. 1/2 of S. W. 1/4 and S. W. 1/4 of S. W. 1/4 of section 33; lots 1, 2 and 3 of section 35, all in township 1 south, range 5 west, San Bernardino meridian. Also, lots 1, 2, 3, and 4, S 1/2 of N. E. 1/4 and S. 1/2 of N. W. 1/4 of section 1; lots 1, 2, 3, 4, 5 and 7, N. 1/2 of N. E. 1/4 and S. 1/2 of N. W. 1/4 of section 17; lot 1 of section 19, all in township 2 south, range 6 west, San Bernardino meridian.

Item 12. That on November 1, 1897, the proper officers of the United States issued and delivered a patent, in regular form, bearing that date, purporting to convey unto the said Southern Pacific Railroad Company the legal title in and to the S. W. 1/4 of section 1, township 2 south, range 6 west, San Bernardino meridan, together with other lands not described in the bill of complaint herein, as lands granted to the said Southern Pacific Railroad Company by the said act of Congress of March 3, 1871.

Item 13. It is further stipulated that within the indemnity limits of the grant to the Southern Pacific Railroad Company made by the act of Congress of March 3, 1871, and outside of the twenty-mile limits, there now remain more than fifty thousand acres of surveyed public lands of the United States, for which there has been

(Testimony of William M. Van Dyke.)

no selection or application to select made by said company.

Item 14. That all parties to this suit may introduce such further and additional testimony and evidence as may be proper, and they may desire to, at any time or times within sixty days from the date of this stipulation, and after due notice.

Mr. CALL.—I would suggest that the taking of testimony in this case be adjourned, to be resumed by the request of either party upon reasonable notice.

Mr. SINGER.—I agree to that.

(Hearing adjourned by consent, to be resumed upon request of either party, upon reasonable notice.)

I certify the foregoing testimony was taken pursuant to an order of the above-named court, made and entered upon the minutes of said Court, at the time and place in the foregoing testimony named, in the city of Los Angeles, county of Los Angeles, State of California, in my presence and in the presence of counsel in said testimony named, and constitutes all the testimony then and there adduced. That previous to giving his testimony, the witness in said record named, was by me duly sworn to tell the truth, the whole truth, and nothing but the truth, in said cause; that said testimony was fully, truly and correctly taken in shorthand and transcribed by me, That the said testimony, after being so transcribed, was not read by, or by me to, the said witness, nor signed by him, it being expressly agreed and stipulated be-

(Testimony of William M. Van Dyke.)

tween counsel for the respective parties that such reading and signing should be waived, as in the said record set forth.

Accompanying said testimony and forming a part thereof, are the several exhibits introduced in connection therewith and referred to and specified therein, as set forth in the foregoing record.

I further certify that I am not attorney, nor of counsel for any of the parties to said cause, nor in any way interested in the event thereof.

In witness whereof, I have hereunto set my hand this 24th day of May, A. D., 1902.

A. M. CATES,
Special Examiner and Stenographer.

[Endorsed]: No. 979. U. S. Circuit Court Ninth Circuit, Southern District of California, Southern Division. The United States of America vs. The Southern Pacific Railroad Company, and others. Report of Testimony Taken Before A. M. Cates Special Examiner. Filed May 24, 1902. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 1.

Juan Bta Alvarado Jefe Politico Ynterino, de la Alta California.

Por cuanto, el ciudadano Juan Bandini ha pretendido S S para su beneficio personal y el de su familia, el terreno conocido con el nombre de Jurupa, dentro de los linderos del diseño, que acompanó á su solicitud; prac-

ticadas previamente, las diligencias, concernientes segun lo despuesto, por las leyes y reglamentos de la materia, usado de las facultades que me son conferidas á nombre de la nación Mejicana, hé mando en concederle el terreno mencionado, declarandole la propiedad de él, por las presentes tehas, ententiendose dicha concesion con entera conformidad á los leyes, á reserva de la aprobacion, ó disaprobacion de la Exma Junta Departamental, y bajo las condiciones siguentes:

1a El agraciado ni sus herederos podran diudir ni enegenar el que se les adjudica, imponerle senso, vinculo, fianza, hipoteca, ni otro gravamen, aunque esa por causa piadosa, ni pasarlo a manos muertos.

2a Podra cercarlo, sin perjudicar las travisias, caminos, y sevidumbres; lo disfrutará, libre y esclusivamente, destinandole al cultivo y uso, que mas le acomode.

3a Solicitará del Juez respectivo le dé la posesion juridica en virtud de este despacho, por el cual, se demarcaran sus linderos, y pondra sus mojoneras.

4a El terreno de que se hace donaciar, es puramente el que se espresa en la Solicitud del interesado, y se donarea en el diseño, y el Juez, que lo posesione, pasara aviso a este gobierno del numero de Sitios que comprende.

En consequencia, mando que sienendole de titulo el presente, y tomandose por firme y valedero se tome razon, en el libro que corresponda, y se entuque al interesado para su resquando y demas fines convenientes.

Dado en Santa Barbara á veinte y ocho de Septiembre de mil ochocientos treinta y ocho.

JUAN B. ALVARADO.

TESTIMONIO

Del Espediente de posesion practicada en fabor del Sor. Don Juan Bandini del Sitio conocido con el nombre de Jurupa año de 1838.

En la ciudad de Los Angeles, Departamento de California, á los cuatro dias del mes de Deciembre de mil ocho cientos treinta y ocho, anuente á la Solicitud del Sor. Dn Juan Bandini a fin dé que, se le dé la correspondiente posesion del Sitio y Rancho Llamado Jurupa, concedido por el Exmo Gobernador de este Departamento, y en virtud á no haber en el pais agumensor examinado, que remida el encenciado terreno, pasese por me y los testigos de mi asistencia al espresado Sitio, y con total arreglo á las premieras medidas, que se han parcticadas, cuyo deseño agugo ál espediente el interesado, procederan á dar la posesion indicada arreglundose al titulo ó despacho que se ha conferido por el Gobierno con fecha viente y ocho de Septiembre ultimo El ciudadano Luis Arenas Alcalde la Constitutional, de esta referida ciudad asi lo dispone, mande y firmo, con los testigos de mi asistencia, en este papel comum, por no haber del sellado respectivo, doy feé.

LUIS ARENAS.

Ass. Ass.

YGNACIO PALOMARES BERNARDINO GUIRADO.

En el mismo dia, mes y año, estando en la Ex Mision de San Gabriel, el Juez que, suscribo pasé oficio al Sor.

Admor. de Dho. Mision, y a los Sores. Yorbas, como unicos colindantes manifistandoles el objeto á que me dingá al punto de Jurupa, como que pertenecia este á aquella comunidad de donde estamos, el primero, y colindantes los sequidos, pues iba a remedir y poner en posesion de el á Don Juan Bandini, lo que pongo por diligencia, que autorizo y firmo con los testigos de mi asistencia, segun dro. doy feé.

LUIS ARENAS.

Ass. Ass.

YGNACIO PALOMARES BERNARDINO GUIRADO.

En el mismo dia, mes y año, estando en la Ex Mision de San Gabriel, el Juez que, suscribo pasé oficio al Sor. Admor. de Dho. Mision, y a los Sores. Yorbas, como unicos colindantes manifistandoles el objeto á que me dingá al punto de Jurupa, como que pertenecia este á aquella comunidad de donde estamos, el primero, y colindantes los sequidos, pues iba a remedir y poner en posesion de el á Don Juan Bandini, lo que pongo por diligencia, que autorizo y firmo con los testigos de mi asistencia, segun dro. doy feé.

LUIS ARENAS.

Ass. Ass.

YGNACIO PALOMARES. BERNARDINO GUIRADO.

En el Rancho de Jurupa, á cinco de Deciembre de mil ochocientos treinta y ocho, yo, el propio Juez para la practica de estas diligencias y en presencia del Sor. Admr. de la Ex Mision de San Gabriel y de Don Carlos Dominguez, que comparecio por parte de los Sres. Yorbas, quienes no habendo manifestado eccepciones nin-

gunas que suspendieran las medidas nombre dos oficiales cordeleros, que por no saber firmar se omitieren sus nombres, a quienes les hizá saber su nombremiento el que aceptaron, bajo de juramento que otorgaron, ofrecieado desempeñar fulmente su encargo, lo que autorizo y firmo con los de mi asistencia, segun dro.

LUIS ARENAS.

Ass. Ass.

YGNACIO PALOMARES BERNARDINO GUIRADO.

En el mismo dia, mes, y año, estando en el paraje y cañada donde los Sres. Yorbas reconocian entenomente por su lindero, á efecto de dienficar las medidas y posesion que corresponde al Sor. Don Juan Bandini, del Sitio nombrado Jurupa, prencas todos los requisitos de leyes, y estando ante mi los testigos de asistencia y los oficiales cordeleros, hizé medir un cordel que contiene cien varas y haciendo a sus estremos unos sancos de madera prena observacion y calento por mi disposicion se tiro el cordel al pie de un serrito que se haya solo en la cañada referida que reconocean por lindero los Sres. Yorbas, al otro lado del Rio de Jurupa, cuyo serrito que llaman los indios en su lengua "Pa chappa," se tomo por mojonera pomeado en el unos piedras sobre otros, rumbo este, á oeste, se medieron y contraon por sobre la orrilla del dho rio treinta mil varas, que remataron á la púnta de la misma mesa, en que el Sor. Bandini tiene establecido la casa y dar vuelta el repetido rio en donde se puso por mojonera un palo clavado; en sequida tirando la cuerda rumbo Sur, á Norte, frente, el Serio de Cuca-

monga, se medieron y contaron siete mil varas, atravesando por entre los dos aguages, de Guapar las que remataron, en el primero medano blanco, que hay en dicho rumbo de Cucamonga. En seguido se tiró el cordel al rumbo Oeste á Este y se medieron las mismas treinta mil varas, que remataron en un Desde testimonio á la parte de las presentes diligencias en papel comun por no haber del sellado que corresponde Luis Arenas, Alcalde lo constitutional de este ciudad y su jurisdiccion así lo decirle mandé y firmé por ante los testigos de mi asistencia segun dro. doy fee, Luis Arenas—Ass. Ygnacio Palomares—Ass. Bernardino Guirado.

Concuerda con su original á que me refiere que ecsiste en el libro de instrumentos publicos, llebado en ambos Juzgaros en el presente año—Esta fulmente sacado y consentado cierto en esta, 3 fs de papel comun por no haber del sellado correspondante, que autorizo y firmó con los testigos de mi asisten en la ciudad de los Angeles del Departamento de California á los diez dias del mes de Deciembre de mil ochocientos treinta y ocho.

In testimony of the truth.

LUIS ARENAS.

Ass. Ass.

YGNACIO PALOMARES BERNARDINO GUIRADO.

Serrito isolado que se haya á la isquierda del camino real que pasa de Sn Gabriel a Sn Bernardino que llaman los indios "Calalmacay," et creal se sinalo por mojónera—De aqui se tiró el cordel rumbo Norte Sur en donde medieron y contaron siete mil varas las que remataron al mismo pie del serrito llamado "Pachappa," de donde

comencieron las semidas, y que hace esquina rambo Este Oeste; con lo que concluyeron las medidas de este sitio, á satisfaccion del interesado y colindantes, cuyo —— de terreno se comperna las siete sitios que refiere en el titulo concedido al Sor. Bandini á quien lo ordeni pusiere las correspondientes mojoneras el las puntos donde corresponde y marcó en senal de la posesion y quedo intendido lo que pongo por diligencia que autorizo y firmo con los testigos de asistencia segun dro. do feé.

LUIS ARENAS.

Ass. Ass.

YGNACIO PALOMARES BERNARDINO GUIRADO.

Angeles, Deciembre diez de mil ochocientos treinta y ocho.

(Vignette.)

Office of the Surveyor General,
Of the United States for California.

I, J. A. Robinson, chief clerk in charge Surveyor General of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican Territory, or Department of Upper California, as also the papers of the late Board of Commissioners to ascertain and settle the private land claims in California; by virtue of the power vested in me by law do hereby certify that the 7 preceding, and hereunto annexed pages, numbered from 1 to 7 inclusive, exhibit a true, full and correct copy of the original grant to Juan Bandini of the Rancho of Jurupa, together with the rec-

ord of judicial possession as the same are now on file in this office and in my custody; that I have carefully compared the same with said original, and that the same is a correct transcript therefrom, and of the whole of such original.'

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this 21st day of June 1878.

[Seal] J. A. ROBINSON,

Chief Clerk Office U. S. Surveyor General for California.

[Endorsed]: Certified copy of the Mexican Grant to Juan Bandini of the Jurupa Grant, given June 21, 1878, by the Surveyor General. The surveyor also certifies that it contains copy of "the record of judicial possession." Ex. 12. May 8, '90. C. L. B. U. S. Circuit Court Southern Dist. of Cal. S. P. R. R. Co. vs. Brown, et al. No. 9. Respondents' Exhibit 12. Filed May 8, 1890. Chas. L. Batcheller. Master and Examiner in Chancery. Filed Aug. 9, 1893. Wm. M. Van Dyke, Clerk. U. S. Surveyor Gen. Office Jun. 20, 1878. S. F., Cal.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of Respondents' Exhibit 12, before Chas. L. Batcheller, Master and Examiner in Chancery, filed in my office August 9th, 1893, in the cause entitled The Southern Pacific Railroad Company, Complainant, vs. David R. Brown, et al., Defendants, No. 9, and remaining of record therein.

Attest my hand and the seal of said Circuit Court, this 26th day of April, A. D. 1902.

[Seal] WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 9. U. S. Circuit Court, Ninth Circuit, Southern District of California. The Southern Pacific Railroad Company vs. David R. Brown et al. Certified copy Respondent's Exhibit 12. No. 979. United States of America, vs. The Southern Pacific Railroad Company, et al. Filed Apr. 1, 1902. Plaintiff's Exhibit 1. A. M. Cates, Special Examiner. Filed May 24, 1902. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 2.

Exhibit 14.

No. 1. H. H.

Juan Bta. Alvarado Gefe Politico Ynterino de la Alta California.

Por cuanto el Ciudadano Juan Bandini ha pretendido para su beneficio personal y el de su familia el Sello. terreno conocido con el nombre de Jurupa dentro de los linderos del diceño que acompaño á su solicitud; practicadas preciamente las diligencias concernientes, segun lo dispuesto por las leyes y reglamentos de la materia usando de las facultades q. me son conferidas á nombre de la Nacion Mejicana, he venido en concederle el terreno mencionado declarandole la propiedad de él por las presentes letras, entendiendose dicha consecion con entera conformidad á las leyes, á reserva de

la aprovacion ó desaprobacion de la Exma. Junta Departamental, y bajo las condiciones siguientes.

1a El agraciado ni sus herederos podrán dividir ni enagenar el que se les adjudica, imponer senso, vinculo, fianza, hipoteca ni otro grabamen aunque sea por causa piadosa, ni pasarlo á manos muertas.

2a. Podrá cercarlo sin perjudicar las travecias, caminos y servidumbres; lo disfrutará libre y esclusivamente, destinandolo al cultivo y usos que le acomode.

3a. Solicitará del Juez respectivo le dé la posecion juridica en virtud de este despacho por el cual se demarcarán sus linderos y pondrá sus mohoneras.

4a. El terreno de que se hace donacion es puramente el q.se espresa en la solicitud del interesado y se demarca en el diseño y el Juez que lo posecione pasar á aviso á este gobierno del numero de sitios que comprende. En consecuencia mando, que sirviendole de titulo el presente y teniendose por firme y valedero se tome razon en el libro que corresponde y se entregue al interezado para su resguardo y demas fines convenientes.

Dado en Santa Barbara á veinte y ocho de Septiembre de mil ochocientos treinta y ocho.

JUAN B. ALVARADO,
Rubrica.

[Endorsed]: No. 361. Juan Bandini—Jurupa—Doc—No. 1. H. H., annexed to the Deposition of Abel Stearns taken before Comr. Hiland Hall. Filed in Office Oct. 19th, 1852. Geo. Fisher, Sec'y. Recorded in Book of Rec. of Ev. Vol. XIV., pages 367 and 368.

TESTIMONIO

Del Espediente de posecion practicado en favor del Sr. Dn. Juan Bandini, del citio conocido con el nombre de Jurupa.

Año de 1838.

No. 2. H. H.

En la Ciudad de los Angeles Departamento de Californias á los cuatro dias del mes de Diciembre de mil ochocientos treinta y ocho, anuente á la solicitud del Sor. D. Juan Bandini á fin de que se le dé la correspondiente posecion del citio y rancho llamado Jurupa consedido por el Exmo. Sor. Gobernador de este Departamento, y en virtud á no haber en el pais, Agrimensor ecsaminado que remida el enunciado terreno, pasese por mi y los testigos de mi asistencia al espresado citio, y con total arreglo á las primeras medidas que se han practicado, cuyo diseño agrego al espediente el interesado, prosedase á dar la posecion indicada, arreglandose al titulo ó despacho que se le ha conferido por el Gobierno con fecha veinte y ocho de Septiembre ultimo.—El Ciudadano Luis Arenas Alcalde lo. Constitucional de esta referida ciudad, asi lo dispuse, mandé y firmé con los testigos de mi asistencia, en este papel comun por no haber del sellado respectivo. Doy fee—Luis Arenas—Assa—Ygnacio Palomares—Assa—Bernardino Guirado—En el mismo dia mes y año, estando en la ex-mision de San Gabriel, el Juez que subscribe, pasé oficio al Sor. Admor. de dha. Mision, y á los Sres. Yorbas, como unicos colindantes, manifestandoles el objeto á que me dirijia al

punto de Jurupa, como que pertenecia este, á aquella comunidad de donde es admor, el primero, y colindantes los segundos pues hiba á remedirlo y poner en posecion de él á D. Juan Bandini; lo que pongo por diligencia que autoriso y firmo con los testigos de mi asistencia segun dro. Doy feé—Luis Arenas—Assa. Ygnacio Palomares—Assa—Bernardino Guirado.—En el rancho de Jurupa, á sinco de Diciembre de mil ochocientos treinta y ocho, y ó el propio Juez para la practica de estas diligencias, y en presencia del Sor. Admor. de la Ex-Mision de Sn. Gabriel, y de D. Carlos Dominguez, que comparecio por parte de los Sres. Yorbas, quienes no habiendo manifestado eccepciones ningunas que suspendieran las medidas, nombré dos oficiales cordeleros, que por no saber firmar, se omitieron sus nombres, á quienes les hise saber su numbramiento, el que a ceptaron bajó de juramento que otorgaron ofreciendo desempeñar, fielmente su encargo, lo que autoriso y firmo con los testigos de mi asistencia—segun dro.—Luis Arenas—Assa—Ygnacio Palomares—Assa. Bernardino Guirado—En el mismo dia mes y año, estando en el parage y cañada hasta donde los Sres. Yorbas reconocian anteriormente por su linderó, a efecto de verificar las Corregido. remedidas y posesion que corresponde al Sor. D. Juan Bandini del citio numbrado Jurupa, previos todos los requisitos de Ley, y estando ante mi los testigos de assistencia y los officiales cordeleros, luze medir un cordel que contenia cien varas, y hacido á sus estremos unos sancos de madera, prefia

observacion y calculo, por mi disposicion se tiró el cordel al pié de un Serrito que se haya solo en la Cañada referida, que re conocian por lindero los Sres. Yorbas, al otro lado del rio de Jurupa, cuyo Serrito, que llaman los indios en su lengua. Pachafpa, se tomó por mohonera, poniendo en él unas piedras sobre otras, rumbo Este á Oeste, se midieron y contaron, por sobre la orilla del dho Rio treinta mil varas que remataron á la punta de la misma mesa en que el Sor. Bandini tiene establescida la casa y dá vuelta el repetido rio, en donde se puso por mohonera, un palo clavado. En seguida tirandó la cuerda rumbo Súr á Norte frente al Serro de Cucamonga, se midieron y contaron siete mil varas, atravesando por entre los dos Aguajes de Guapán, las que remataron en el primer medano blanco que hay en dicho rumbo de Cucamonga. En seguida se tiro el cordel rumbo Oeste a Este y se midieron las mismas treinta mil varas, que remataron en un Serrito ayladó que se haya á la isquierda del camino real que pasa de Sn. Gabriel á Sn. Bernardino, y llaman los indios, Catalmacay, el cual se señaló por mohonera. De ayi se tiró el cordel rumbo Norte Súr, en donde se midieron y contaron siete mil varas las que remataron al mismo pié del Serrito llamado, Pachafpa, de donde comensaron las remedidas y que hace esquina rumbo, Este Oeste con lo que se con cluyeron las medidas de este citio á satisfacion del interesadó y colindantes, en cuya estencion de terreno, se componen los siete citios que se refieren en el titulo consedido al Sor. Bandini a quien le ordené pusiese las

correspondientes mohoneras en los puntos donde corresponde, y marcó en señal en posecion, y quedó entendido, lo que pongo por diligencia que autoriso y firmó con los testigos de asistencia segun dro. Doy fee—Luis Arenas—Assa—Ygnacio Palomares—Assa—Bernardinó Guirado—Angeles Diciembre diez de mil ochocientos treinta y ocho—Desele testimonio á la parte de las presentes diligencias en papel comun por no haber del sellado que corresponde. Luis Arenas Alcalde 1o Constitucional de esta ciudad y su jurisdiccion asi lo decreté, mandé y firme por ante los testigos de mi asistencia segun dro. Doy feé—Luis Arenas Assa. Ygnacio Palomares—Assa—Bernardino Guirado——

Concuerdo con su original á que me refiero que ecciste en el libro de instrumentos publicos llebado en ambos juzgados en el presente año. Está fielmente sacado y consertado, escrito en estas 3 fs de papel comun por no haber del sellado correspondiente, que autoriso y firmo con los testigos de mi asistencia, en la ciudad de los Angeles de Departamento de Californias á los diez dias del mes de Diciembre de mil ochocientos treinta y ocho—Doy feé.

En testimonio de verdad.

LUIS ARENAS,
Rebrica.

Assa. YGNO. PALOMARES,
Rubrica.

Assa—BERNARDINO GUIRADO,
Rubrica.

[Endorsed]: No. 361. Juan Bandini—Jurupa—Doc. No. 2 H. H., annexed to the Deposition of Abel Stearns taken before Comr. H. Hall. Filed in Office Oct. 19, 1852. Geo. Fisher, Sec'y. Recorded in Book of Rec. of Ev., Vol. XIV, pages 368 and 369.

(Vignette.)

Office of the Surveyor General,

Of the United States, for California.

I, R. P. Hammond, Jr., Surveyor General of the United States for the State of California, and as such, having in my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican Territory, or Department of Upper California, as also the papers of the late Board of Commissioners to ascertain and settle the private land claims in California; by virtue of the power vested in me by law,

Do hereby certify, that the 7 preceding, and hereunto annexed pages of paper numbered from one to seven inclusive, exhibit a true, full and correct copy of the original. —— Grant of Jurupa Rancho made to Juan Bandini and judicial possession of the same with indorsements thereon; the same being marked and known as Docs. No. 1, H. H. & No. 2 H. H. in Case No. 361 Juan Bandini—Jurupa—as designated on the docket of the foresaid Board of Commissioners and now on file in this office, and in my custody; that I have carefully compared the same with said original, and that the same is a correct transcript therefrom, and of the whole of such original.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this 23d day of April, 1888.

[Seal Surveyor General's Office, California.]

R. P. HAMMOND, Jr.

U. S. Surveyor General for California.

[Indorsement: U. S. Circuit Court, Southern Dist. of Cal. S. P. R. R. Co. vs. Brown et al. No. 9. Respondent's Exhibit 14. Filed May 8, 1890. Chas. L. Batcheller, Master and Examiner in Chancery. Filed Aug. 9, 1893. Wm. M. Van Dyke, Clerk. ———, Deputy.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of Respondent's Exhibit No. 14, before Chas. L. Batcheller, Master and Examiner in Chancery, filed in my office August 9th, 1893, in the cause entitled The Southern Pacific Railroad Company, Complainant, vs. David R. Brown et al., Defendants, No. 9, and remaining of record therein.

Attest my hand and the seal of said Circuit Court, this 26th day of April, A. D. 1902.

[Seal] WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 9. U. S. Circuit Court, Ninth Circuit, Southern District of California. The Southern Pacific Railroad Company, vs. David R. Brown et al. Certified copy Respondent's Exhibit No. 14. No. 979.

Bandini, to the end that the corresponding possession may be given him of the tract and ranch called Jurupa, granted by the most excellent Sor. Governor of this Department, and from the fact of not having in the country a learned surveyor that can measure the aforesaid tract let it be proceeded by me and my assistant witnesses to the tract aforesaid, and in full conformity with the former measurements, whose diagram is attached to the "Expediente" of the party interested proceed to give the possession required, conformably to the title or despatch, that has been conferred upon him by the Government of date the 28th of September last, The Citizen, Luis Arenas, 1st Alcalde Constitutional of this said city; thus I directed, ordered and signed with my assistant witnesses, on this common paper for want of the proper sealed.

I attest: LUIS ARENAS.

Ass. IGNACIO PALOMARES.

Ass. BERNADINO GUIRADO.

On the same day, month and year, being at the ex-Mission of San Gabriel, the Judge that subscribes, gave notice to the administration of said Mission and the Yorbas, as the only adjoining neighbors, showing them the object which had directed me to the point of Jurupa, that it had belonged to the corporation of which he is administrator, and the first adjoining neighbor, and to the second adjoining neighbors, then, that I went to remeasure it and to place in its possession Don Juan Bandini which I set down as part of the proceeding, which I authorize and sign with my as-

sistant witnesses according to law I attest Luis Arenas—Ass. Ignacio Palomares, Bernadino Guirardo.

At the ranch of Jurupa the 5th of December, 1838, I the proper Judge for the execution of these proceedings, and in presence of the Señor Administrator of the ex-Mission of San Gabriel and of Don Carlos Dominguez who appeared on the part of Messrs. Torbas, who not having manifested any objections, that should suspend the measurements, I appointed two official Cordbearers whose names are omitted as they could not write them, to whom I caused the appointment to be made known, which they accepted under oaths, to which they consented offering to discharge faithfully their trust which I authorized and sign with my assistant witnesses according to law.

Luis Arenas—Ass. Ignacio Palomares. Ass. Bernadino Guirado.

On the same day, month and year, being at the place and Cañada where the Messrs. Yorbas had formerly established their boundary line, for the purpose of verifying the remeasurements and possession that belong to Don Juan Bandini of the tract named Jurupa, the previous requisite of the law having been performed, and being present my assistant witnesses and official Cordbearers, I caused a cord to be measured, which contained one hundred varas, and fastened to its ends stakes and after previous observation and calculation for my direction the cord was extended to the foot of a little mountain which stands alone at the aforesaid cañada which the Messrs. Yorbas, had established for a boundary to the other side of the river of

Jurupa which little mountain the Indians in their language call "Pachappa" and which was taken for a landmark, placing on it a pile of stones course east to west, there were measured and counted, along the bank of said river, thirty thousand varas, which terminated at the point of the same table-land. When Mr. Bandini had established his house and where the said river makes a turn at which point a landmark was placed, a stake driven into the ground.

Thence extending the cord, course south to north, in front of the Mountain of Cucamonga, there were measured and counted seven thousand varas, crossing between the two springs of Guapau, which terminated at the first white sand-bank which is in said course to Cucamonga. Thence the cord was stretched, course west to east, and there were measured the same thirty thousand varas, which terminated at an isolated small mountain, which on the left of the road that runs from San Gabriel to San Bernardino, which the Indians call "Catalmacy," which was designated as a landmark. Thence the cord was stretched, course north to south, in which there were measured and counted seven thousand varas, which terminated at the same foot of the little mountain called "Pachappa" where the remeasurements commenced. And which makes a corner course east west, with which the measurements of this tract were concluded to the satisfaction of the party interested and the neighbor boundaries to it in which extent of land there are seven leagues, that are referred to in the title granted to Mr. Bandini, whom I ordered that he should fix the corres-

ponding landmarks, at the points where they suit, and mark them in token of possession, and leave them easy to be known; all of which, I set down for the proceedings, which I authorize and sign with the assistant witnesses, according to law.

I attest.

LUIS ARENAS.

Ass. IGNACIO PALOMARES.

Ass. BERNADINO GUIRADO.

Angeles December 10th, 1838. Give testimony to the party interested of the present proceedings on common paper for want of the proper sealed. Luis Arenas. 1st Constitutional Alcalde of this City and its jurisdiction. Thus I decree, order and sign in presence of my assistant witnesses according to law.

I attest.

LUIS ARENAS,

Ass. IGNACIO PALOMARES.

Ass. BERNADINO GUIRADO.

It agrees with the original to which I referred that exists in the book of public instruments kept in both courts the present year. It is faithfully taken, compared, written in these 3 leaves of common paper for want of the sealed corresponding to it. Which I authorize and sign with my assistant witnesses, in the City of

Los Angeles of the Department of Californias, at the 10th day of the month of December, 1838, I attest.

In witness of the truth.

LUIS ARENAS,

Ass. BERNARDINO GUIRADO,

Ass. IGNACIO PALOMARES.

I certify the above to be a true copy.

JOHN O'WHEELER.

Los Angeles, Sept. 17th, 1852.

D. Translation of Juridl. Possn. No. 361. Juan Bandini. "Jurupa." Filed in office Sept. 25th, 1852. Geo. Fisher, Sec'y. Doc. H. H. No. 2 annexed to the deposition of Abel Stearns of Oct. 19, '52. Geo. Fisher, Sec'y. Recorded in Record of Evidence, vol. 15, p. 323.

Seal of the third class, 25c. Qualified provisionally for the Maritime Custom-house for the port of Monterey in the Department of the Californias during the years 1840 and 1841 Alvarado Antonio Marie Osio.

Juan B. Alvarado, Constitutional Governor of the Department of the Californias.

[Seal]

The Most Excellent Departmental Assembly in session of the 22d of May of the present year, approved the grant heretofore the Government made, of date the 16th of April, 1839, of the land known by the name of Jurupa, to Don Juan Bandini, in the following terms:

Art. 1st. The Grant made by the Government of the department dated the 16th of April, 1839, to the person of Don Juan Bandini, of the place called Jurupa, is approved.

And for the protection of the party interested the present is issued at Monterey the 30th of May, 1840.

JUAN B. ALVARADO,

MANUEL JIMENO,
Secretary of the Despatch.

F. Translation of Act of Confirmation by Dep. Assembly. No. 361. Juan Bandini—"Jurupa." Filed in Office Sept. 25th, 1852. Geo. Fisher, Sec'y.

Doc. H. H. No. 3 annexed to the deposition of Abel Stearns of Oct. 19th, 1852. Geo. Fisher. Recorded in Rec. of Evidence, vol. 15, p. 326.

To the Honorable, the United States Commissioners for the Adjudication and Settlement of California Land Claim:

The petition of Juan Bandini, resident of the County of San Diego and State of California, unto your Hon. Board represents: That he is the owner in fee simple of that part of the ranch of Jurupa, called Guapa: That said tract of land was originally granted to him in fee simple by Juan B. Alvarado, Political Chief of Alta California, by deed of grant bearing date the 28th of September, A. D. 1838, said Political Chief having sufficient and ample powers in the premises. The land, as originally granted to your petitioner, was called Jurupa, and contained according to the terms of said concession and the act of judicial possession thereof, corollary to said grant seven leagues of grazing land, a little more within the following boundaries: Beginning at a little mountain called "Pachappa," at a place where is a pile of stones,

which serves for a corner for the lands of the Yorbas, as well as this, tract course east to west, along the river of "Jurupa," distant 30,000 varas to a point, in the table land, where petitioner built his house, and where the river makes a turn, where a stake was placed. Thence course south to north, fronting the mountain of "Cucamonga" crossing between two springs, distant 7,000 varas, to the first white sand bank in said course, where a land mark is placed; thence course west to east, to a small isolated mountain, on the left of the road from San Gabriel to San Bernardino, distant 30,000 varas, there is a landmark; thence, course north to south 7,000 varas to the place of beginning, containing seven leagues of grazing land, and more; situate in the county of Los Angeles and State of California. That of this original tract called Jurupa, your petitioner about the year 1842 or early in 1843, sold and transferred to Benjamin D. Wilson a portion; but how much your petitioner is now unable to say, not having a copy of said deed of conveyance, or any other means definitely to determine; but which will appear in said deed; which said sale left to your petitioner the balance of said tract to which the name of Guapa has been given. Said tract has never been surveyed by the Surveyor General. There are no known interfering claims.

Your petitioner has filed the following papers with your Secretary, as evidence in the support of his claim:

1. A copy of the original grant marked A.

2. A copy of the Act of Judicial possession, marked C.

3. A copy of the Act of Approval made by the Dep. Assembly, marked E.

All of which are accompanied with faithful transactions. And he will reply upon such other and parol evidence, as may be necessary to sustain his claim.

Your petitioner would further state, that he has continued in peaceable and uninterrupted possession of said tract, from the date when judicial possession was given to him, to wit, December 4th, 1838, until the present day; and has fulfilled all the conditions of said grant. And that he has been confirmed in said grant and possession by act of approval of the Departmental Assembly of California, bearing date, May 30th, A. D. 1840. Therefore, your petitioner prays that, your superior knowledge and sense of justice will confirm him in his present claim.

SCOTT AND GRANGER,
Attys. for Petitioners.

Angeles, Sept. 25th, 1852.

No. 361. Juan Bandini—"Jurupa." Petition. Filed in office Sept. 25th, 1852. Geo. Fisher Sec'y. Recorded in Record of Petitions, vol. 1, pages 272 and 273. Geo. Fisher, Sec'y.

JUAN BANDINI.
vs.
THE UNITED STATES. } No. 361.

On hearing the proofs and allegations in this case it is adjudged by the commission that the claim of the pe-

titioner is valid, and it is therefore decreed that the same be confirmed.

The land, or grant hereto confirmed is called by the name of "Jurupa," and is described as follows to wit: Commencing at a mound called "Pachappa" with a pile of stones placed thereon running west on the bank of the river thirty thousand varas terminating at a point of table land and where the river makes a turn, thence north in front of the mountain Cucamonga seven thousand varas passing between the two springs called Guapau, terminating at the first white sand bank in the course last aforesaid. Then east thirty thousand varas, to a small isolated mountain to the left of the road running from San Gabriel to San Bernardino, thence south to the place of beginning situate in the county of Los Angeles.

Excepting and reserving so much and such parts as has been conveyed by the grantee to Benjamin D. Wilton.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

No. 361. Juan Bandini Jurupa. Decree of Confirmation. Filed in Office Oct. 17th, 1854. Geo. Fisher, Sec'y. Recorded in Record of Decisions, vol. 2, page 288. Geo. Fisher, Sec'y.

[Endorsed]: Stockman vs. R. L. & I. Co. Plff. Ex. A. Filed July 8th, 1880. A. F. McKenney, Clerk.

(Scroll: E Pluribus Unum.)

Office of the Surveyor General,

Of the United States, for California.

I, Jas. T. Stratton, surveyor general of the United States for the State of California, and as such, having in my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican territory, or department of Upper California, as also the papers of the late Board of Commissioners to ascertain and settle the private land claims in California; by virtue of the power vested in me by law, do hereby certify, that the twenty preceding, and hereunto annexed pages, of paper numbered from one to 20 inclusive, exhibit a true, full and correct copy of the following papers to wit: Translation of Grant, Judicial Possession, Approval of Departmental Assembly, Petition to Land Commission, and Decree of Confirmation together with the indorsements thereon, as the same are now on file in this office, and in my custody; that I have carefully compared the same with said original, and that the same is a correct transcript therefrom, and of the whole of such original.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this 10th day of Sept., 1874.

[Seal] JAS. T. STRATTON,

U. S. Surveyor General, for California.

[Endorsed]: Transcript containing translations of original grants of Sept. 28, 1838, "Testimony of the Ex-

pediente" of Dec. 4, 1838, Survey of Dec. 5th, 1838, "Testimony endorsed," Dec. 10, 1838 (Copy of approval by the Department Assembly of April 16, 1839, certified to by Governor May 30, 1840). Also contains copies of Petition of Bandini to the B. L. C. of Sep. 25, '52, Decisions of the Comr. in his favor Oct. 17, '54. Ex. 15. May 8, '90. C. L. B. U. S. Circuit Court, Southern Dist. of Cal. S. P. R. R. Co. vs. Brown et al. No. 9. Respondents' Exhibit 15. Filed May 8, 1890. Chas. L. Batcheller, Master and Examiner in Chancery. Filed Aug. 9, 1893. Wm. M. Van Dyke, Clerk.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of Respondents' Exhibit 15, before Chas. L. Batcheller, Master and Examiner in Chancery, filed in my office August 9th, 1893, in the cause entitled The Southern Pacific Railroad Company, Complainant, vs. David R. Brown, et al., Defendants, No. 9, and remaining of record therein.

Attest my hand and the seal of said Circuit Court, this 26th day of April, A. D. 1902.

[Seal] WM. M. VAN DYKE,

Clerk.

[Endorsed]: No. 9. U. S. Circuit Court, Ninth Circuit, Southern District of California. The Southern Pacific Railroad Company vs. David R. Brown, et al. Certified copy Respondents' Exhibit No. 15. No. 979. The United States of America vs. The Southern Pacific Rail-

road Company, et al. Filed Apr. 1, 1902. Plaintiff's Exhibit 3. A. M. Cates, Special Examiner. Filed May 24, 1902. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 4.

Exhibit 13:

[Stamp. U. S. Surveyor-Gen'l Office, S. F. Cal. Jul. 17, 1878.]

In the District Court of the United States, for the Southern District of California,

ABEL STEARNS,

Appellee,

ad

THE UNITED STATES,

Appellants.

No. 213. "Jurupa." Transcript 361.

This cause coming on to be heard on appeal from the final decision of the United States Board of Land Commissioners to ascertain and settle the private land claims in the State of California, under an act of Congress approved March 3d, 1851, on a transcript of the record and proceedings of said board, and of the papers and evidence upon which said decision was founded and on additional evidence and papers filed in this Court; and it appearing that said transcript and the notice of appeal have been duly filed according to law, and counsel for the respective parties having been heard.

It is ordered, adjudged and decreed, that the said decision of the said Board of Land Commissioners, be and

hereby is affirmed. And it is further ordered, adjudged and decreed that the title of the appellee, Abel Stearns, to the lands claimed in this case is good and valid, and the same is hereby confirmed to him as follows:

The lands of which confirmation is hereby made are those known as "Jurupa" situate in the county of San Bernardino, to the extent of eleven square leagues, and no more, within the boundaries designated in the Judicial Possession given of said lands to Juan Bandini the Act of Testimonial whereof is on file in the case.

Provided, that should the quantity of land within said boundaries be less than eleven square leagues, then confirmation is hereby made only of such less quantity.

The said boundaries being as follows: Commencing at the foot of a small hill, standing alone, at the cañada which the Messrs. Yorba recognize as their boundary, on the farther side of the river of Jurupa, which hill the Indians in their tongue call "Pachappa," which was taken for a landmark, placing on it certain stones on top of others; thence course westerly along the bank of the said river thirty thousand varas to the point of the same table land on which Mr. Bandini had established his house; and where the said river makes a bend, where a stake was driven for a landmark, thence northerly, fronting towards the mountains of Cucamonga seven thousand varas passing between the two springs of Guspar, ending at the first white sand bank which there is on said course towards Cucamonga; thence, easterly, the same thirty thousand varas to a small lone mountain on the left hand of the high road going from San Gabriel to

San Bernardino, called by the Indians "Catalmacay" and which was designated as a landmark; thence southerly seven thousand varas to the point of beginning at the foot of the small hill called "Pachappa" which makes a corner east, west. And excepting from this confirmation to the appellee, such portion of the lands above described as may formerly have been conveyed by Juan Bandini, the original grantee thereof, to Benjamin D. Wilson as set forth in the original petition herein to the aforesaid Board of Land Commissioners.

Thus done and signed this 5th day of April.

(Signed) ISAAC S. K. OGIER,
U. S. Dist. Judge.

1861.

Filed April 5th 1861. G. L. Mix, Clk.

United States of America,
Southern District of California. }

I, Gustavus L. Mix, clerk of the United States District Court for the Southern District if California, do hereby certify the above and foregoing to be a full, true and correct copy of the original as the same appears of record and on file in my office, in the case of Abel Stearns, claimant, against the United States for the place called "Jurupa," and I do further certify that said decree stands unreversed and unappealed from.

In witness whereof I have this day hereunto set my

hand and the seal of said Court Los Angeles, October 23, 1861.

[Seal] (Signed) G. L. MIX,
Clerk.
Per John O'Wheeler,
Deputy.

[Endorsed]: "Jurupa." No. 213. U. S. Dist. Court South Dist. Cala. Abel Stearns Appellee ads. United States Appellants. Decree. "Jurupa." J. Bandini.

(Scroll: E. Pluribus Unum.)
Office of the Surveyor-General.
Of the United States, for California.

I, T. Wagner, Surveyor General of the United States for the State of California, do hereby certify, that the four preceding, and hereunto annexed, is a full, true and correct copy of a certain instrument of writing now of record and on file in this office, and in my custody; that I have carefully compared the same with said original, and that the same is a correct transcript therefrom, and of the while of such orginal.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this 16th day of July, 1878.

[Seal] THEO. WAGNER.
U. S. Surveyor-General, for California.

[Endorsed]: "Jurupa." Certified copy of the Decree of the U. S. District Court rendered Apr. 5, 1861, confirming the decision of the Board of Land Commissioners in favor of Abel Stearns. Ex. 13. May 8, '90. C. L. B.

U. S. Circuit Court, Southern Dist. of Cal. S. P. R. R. Co. vs. Brown et al. No. 9. Respondent's Exhibit 13. Filed May 8, 1890. Chas L. Batcheller, Master and Examiner in Chancery. Filed Aug. 9, 1892. Wm. M. Van Dyke, Clerk.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of Respondent's Exhibit 13 before Chas. L. Batcheller, Master and Examiner in Chancery, filed in my office August 9, 1893, in the cause entitled The Southern Pacific Railroad Company Complainant, vs. David R. Brown, et al., Defendants, No. 9, and remaining of record therein.

Attest my hand and the seal of said Circuit Court, this 26th day of April, A. D. 1902.

[Seal] WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 9. U. S. Circuit Court Ninth Circuit, Southern District of California. The Southern Pacific Railroad Company vs. David R. Brown, et al. Certified copy Respondent's Exhibit 13. No. 979. United States of America vs. The Southern Pacific Railroad Company et al. Filed Apr. 1, 1902. Plaintiff's Exhibit 4. A. M. Cates, Special Examiner. Filed May 24, 1902. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 5.

JURUPA RANCHO—"Stearns."

Under Act of Congress of May 10, 1872.

FIELD NOTES

of

The Survey of the Jurupa Rancho Confirmed to Abel Stearns located in San Bernardino County, township No. ——, range No. ——, base and meridian, State of California. Survey made by Wm. Minto, U. S. Deputy Surveyor under his contract dated September 23, 1878, and approved Octo. 8th, 1878.

Survey commenced October 31, 1878.

Survey completed November 4, 1878.

PRELIMINARY OATH OF ASSISTANTS.

I, Wm. P. Reynolds, do solemnly swear that I will well and truly perform the duties of Compassman, according to instructions given me, and to the best of my skill and ability.

WM. P. REYNOLDS.

Subscribed and sworn to before me this 31st day of Oct., 1878.

J. T. AKIN,
J. P. for Chino Township.

We, Richard Larrimore and Frank Mayhew, do solemnly swear that we will faithfully execute the duties of chain carriers; that we will level the chain upon uneven ground, and plumb the tally pins whether by stick-

ing or dropping the same that we will report the true distance to all notable objects, and the true length of all lines; that we will assist in measuring, to the best of our skill and ability.

R. LARRIMORE.
FRANK MAYHEW.

Subscribed and sworn to before me, this 31st day of Oct., 1878.

J. T. AKIN,
J. P. of Chino Tp.

I, J. K. Tuffree, do solemnly swear that I will well and truly perform the duties of Axeman according to instructions given me, and to the best of my skill and ability.

J. K. TUFFREE.

Subscribed and sworn to before me this 31st day of Oct., 1878.

J. T. AKIN,
J. P. of Chino Tp., San Bernardino Co., California.

The Hon. Commissioner of the General Land Office directs that the corner No. 26 of the Reynolds Survey be extended south to the Santa Ana River and north to the vicinity of the first white sandhill. And that the north boundary be made a straight line from the latter point to Tacamalcay.

From the post on the north side of the River Santa Ana Station J. 22 on the Reynolds Survey of the Jurupa L. S. 40 in the final survey of the Rancho La Sierra (Yorba) and E. R. VII on Survey of Rancho El Rincon, the ruins of an old adobe house on the point of hill south

of the Santa Ana River bears S. 7 1/2° E. This house is said to have been built by Juan Bandini. He also built the house now occupied by Leonardo Cota north of the river and about two miles from this station a third house built by Bandini and referred to by Mr. Hopkins in his report on the boundaries of this rancho, was situated on the north bank of the river and about four miles above this point.

From this point (J. 22 of the Reynolds Survey of the Jurupa) I run S. 71° W. along the surveyed boundary of the Rancho La Sierra and El Rincon in washed bed of river, va 14° E. 4.75 chains to station; thence N. 83 1/2° W. 21.00 chains to station; thence S. 79 1/2° W. 21.00 chains to station; thence S. 64 1/2° W. 1.16 chains to a point and set a post 48x4x4 in marked J. XXIII and made an earth mound 30 in high with pits 30x30x15 in on the Grant line; thence north va. 13° 54′ E. 14.20 chains—A ditch 12 lks. wide runs W.

Leave washed riverbed for rich bottom land. Ruins of Bandini house on S. side of the river bears S. 38° E.

15.40 chains—Road E. and W.

15.94 chains—Fence E. and W.

28.50 chains—Leave bottom land E. and W. for rolling mesa.

34.40 chains—Road E. and W.

40.00 chains—Set stake in mound and pits.

54.56 chains—Fence E. and W.

In advance about 3.00 chs. there is an impassable tule swamp on Spring creek, to avoid swamp I run east 13.50 chs. to a point; thence north on offset line 25.44 to a

point; thence west 13.50 to point on line and at 80.00 chains—Set a stake in mound with pits about 8.00 chs. north of swamp.

80.14 chains—Fence E. and W.

80.40 chains—Road E. and W. a ditch 7 lks. wide runs S. E. McCarty's house bears N. 71° E.

81.60 chains—Leave ditch course S. W.

81.70 chains—Fence S. W. McCarty's house brs. S. E.

83.00 chains—Enter swampy bottom land E. & W.

89.50 chains—Spring Creek 25 lks. wide runs S. W. Leave swampy bottom land for wheatfield.

104.32 chains—Fence E. and W.

115.00 chains—Leave wheatfield, descent to Creek.

117.00 chains—Spring Creek 25 lks. wide runs S. E.

125.54 chains—Spring Creek 25 lks. wide runs S. W.

130.27 chains—Fence E. and W. enter Mayhew's orchard.

138.50 chains—Mayhew's house brs. E. 1.02 chs.

141.20 chains—Fence E. and W. leave orchard.

141.58 chains—To Station 26 of the Reynold's Survey of the Jurupa on the north boundary of the Rancho El Rincon 34.00 chs. west of Station E. R. X.

154.60 chains—Fence E. and W.

155.80 chains—Road E. and W.

161.60 chains—To a post marked J. on the north boundary of T. 3 S., R. 7 W. San Bernardino Meridian, 14 chs. west of the 1/4 sec. Cor. between Secs. 4 and 33. Oct. 31, 1878.

212.20 chains—Springs of Gaspar N. 60° W. and S. 60° E.

220.74 chains—Road E. and W.

231.46 chains—Intersect S. Bdy. of Rancho Santa Ana Del Chino 61.24 chs. S. 82° W. from the post S. A. C. 3 Set post 40x4x3 in. marked J. and S. A. C. in mound 20 in. high pits 20x18x12 in.

280.70 chains—Set a cedar post 48x4x4 in marked J. XXIV made mound 30 in high and pits 24x24x15 in. This is the nearest point on this line to the most southerly of the White Sand Hills between the Springs of Gaspar and Cucamonga. The sandhill referred to bears from this point N. 69° E. to run from this point and strike the post on Tacamalcay requires a course of N. 68° 57′ E. Va. 13° 56′ E.

21.90 chains—Road N. W. and S. E.

26.00 chains—West point of sandhill.

29.50 chains—White sandhill.

This is the most southwesterly white sandhill in this vicinity.

48.54 chains—Intersect east boundary of the Rancho. Santa Ana del Chino 60.40 chs. N. 14° 1/2 W. from the post at Station S. A. C. No. 3. Set a cedar post 48x4x4 in. in mound 24 in. high with pits 24x18x12 in. on line of Jurupa Rancho.

58.00 chains—A white sandhill.

68.00 chains—Road N. E. and S. W.

70.20 chains—Road N. E. and S. W.

113.68 chains—Intersect line between secs. 22 and 27 33.15 chs. east of the cor. to fractional secs. 22 and 27 on the east boundary of the Rancho Addition Santa Ana del Chino. Set a post 40x3x3 in. in mound 20 in.

high with pits 18x18x12 in. for cor. to fractional secs. 22 and 27.

135.45 chains—A road N. E. and S. W.

144.12 chains—Intersect line between sec. 22 and 23 29.40 chs. S. of the 1/4 sec. cor. between secs. 22 and 23. Set a post 48x3x3 in. in mound 24 in. high with pits 24x18x12 in. for cor. to fractional secs. 22 and 23.

221.00 chains—Leave level land for rolling plain N. and S.

229.82 chains—Intersect line between secs. 23 and 24 38.70 chs. S. of cor. to secs. 13, 14, 23, and 24. Set a post 40x3x3 in. in mound 24 in. high, with pits 24x18 x12 in. for cor. to fractional secs. 23 and 24.

233.00 chains—A white sandhill bears N. 24° W. about 4 chs. This hill is claimed by the settlers to be the N. W. corner of the Jurupa Rancho.

The ruins of the old Bandini house which the same parties allege marks the S. W. cor. of the rancho bears about S. 24° E. on the west bank of the Santa Ana river.

260.70 chains—Road N 21° W. and S. 21° E. leave chaparral.

315.52 chains—Intersect the line between ranges 6 and 7 W. San Bernardino meridian 7.90 chs. south of the cor. to secs. 13, 18, 19 and 24 and set a charred stake 30x3x3 in. in mound 20 in. high with pits 24x24 x12 in. for cor. to fractional secs. 19 and 24, Nov. 7, 1878.

395.52 chains—Set a stake on line, in mound and pits.

466.10 chains—Arroyo 2 chs. wide, 8 ft. deep, runs S. 20° W.

475.52 chains—Set a stake on line, made mound and pits.

501.45 chains—Road N. 20° E. and S. W.

555.52 chains—Set a stake on line made mound and pits.

635.52 chains—Set a stake on line, made mound and pits.

679.35 chains—Road N. 70° W. and S. E.

Ascend gradually.

705.52 chains—Set a stake on line in mound with pits.

750.00 chains—Over low hills.

785.52 chains—Set a stake and make mound and pits.

810.00 chains—Ascend mountain bearing S. E.

829.30 chains—Intersect line between ranges 5 and 6 W. 65.30 chs. S. of the cor. 2 tps. 1 and 2 S. Set a stone 16x10x8 in.

853.00 chains—Summit of Mountain Spur. Sloping south.

889.00 chains—Summit of Spur. Slopes S.

909.30 chains—Set a stone 18x12x7 in. Nov. 2, 1878.

957.00 chains—Ravine, course S. 25° E. at base of Mt.

989.30 chains—Set a stake in mound with pits.

1008.25 chains—Road N. E. and S. W.

1009.00 chains—Set a stake, made mound and pits.

1036.00 chains—Ascend mountain bearing N. E. and S.

1056.00 chains—Summit of mountain (very rocky) bearing N. and S. E., made mound of stone.

1069.30 chains—On steep mountain slope to N. E. set a stone 20x12x6 in.

1101.00 chains—Base of mountain bears N. W. and S. E., enter rolling plain with scattering chaparral.

1102.40 chains—Road N. W. and S. E.

1149.30 chains—Set a stake in mound with pits.

1229.30 chains—Set a stake in mounds with pits.

1260.40 chains—Road N. W. and S. E.

1294.65 chains—Fence course N. and S.

1309.30 chains—Set a stake in mound with pits.

1342.54 chains—Intersect line between ranges 4 and 5 W., San Bernardino meridian, 1.15 chs. S. of the 1/4 sec. cor., between secs. 25 and 30, T. 1 S. This point falls in a road running east and N. W. and 20 lks. N. of the point of intersection. I set a witness post 40x4x4 in. in a mound 24 in. high with pits 24x18x12 in.

1346.90 chains—Road N. and S., leave chaparral.

1360.74 chains—Fence N. and S. enter field.

1385.92 chains—Road E. and W. leave field.

1399.26 chains—To the post marked J. XXVI on the hill called Tacamalcay, Nov. 3, 1878.

The Surveyor General having made a personal examination of the west part of the Jurupa Rancho directs me to run a line from the Station No. 22 of the Reynolds Survey north through the Springs on the head of Spring Creek and terminating in the north boundary of the Rancho as established under the instructions of the Hon. Commissioner. In compliance therewith I run from the post J. 222 of Reynolds Survey of the Jurupa Station 10 of the survey of the Rancho La Sierra, Yorba Confirmee and Station VII of the survey

of the Rancho El Rincon: along E. Bdy. of Ro. El Rincon. Va 14° E.

42.40 chains—To post J. 23 of Reynolds' Survey of the Jurupa and E. R. VIII of Survey Rincon Rancho.

78.90 chains—A stake set for 3.4, 9 and 10, T. 3 S., R. 7 W., San Bernardino meridian.

82.60 chains—Road E. and W.

158.86 chains—To a post at the cor. to secs. 3, 4, 33, and 34 on the N. bdy. of T. 3 S., R. 7 W.

166.46 chains—A branch of Spring Creek 12 lks. wide runs W. This branch rises in a large Spring about 8.00 chs. E.

175.94 chains—A branch of Spring Creek 10 lks. wide runs S. 70′ W.

A spring bears N. E. 5 chs.

A spring bears N. 30° W., 3.20 chs.

Spark's house bears N. 44° W., 3.60 chs.

Enter tule swamp or Cienega.

177.90 chains—Leave tule swamp E. and W.

184.00 chains—Road N. 85° E.

189.08 chains—Road N. 60° E. and S., 60° W.

208.00 chains—South side of spring.

209.00 chains—Schoolhouse brs. W. 3.00.

209.70 chains—Road E. and W.

236.34 chains—Intersect south boundary of the Rancho Santa Ana del Chino 6.40 chs. S. 82° W. from the post at Station S. A. C. 3. Set a post 48x3x3 in. in mound 24 in. high, with pits 20x20x12 in.

256.85 chains—Road course E. and W.

261.40 chains—Intersect E. bdy. of Ro. Santa Ana del Chino, 25.12 chs. N. 14 1/2° W. from Station S. A. C. No. 3.

289.84—Intersect the north boundary of Jurupa Rancho 57.97. chs. N. 68° 57′ E. from the post J. XXIV. Set a post 48x4x4 in. marked J. 25, made mound 30 in. high and pits 24x24x12 in. Nov. 4, 1878.

We do hereby certify that we assisted Wm. Minto, U. S. Deputy Surveyor in surveying the boundary lines of the Rancho Jurupa, situated in the county of San Bernardino in the State of California, and finally confirmed to Abel Stearns, and that said Rancho has been in all respects to the best of our knowledge and belief, well and faithfully surveyed, and boundary monuments established according to the laws of the United States, and the instructions of the Surveyor General.

W. P. REYNOLDS,
Compassman.
R. LARRIMORE,
Chainman.
FRANK MAYHEW,
Chainman.
J. K. TUFFREE,
Axman.

Subscribed and sworn to before me, this 4th day of November, 1878.

ALEXANDER BAILEY,
J. P., in and for the Co. of Los Angeles.

I, Wm. Minto, U. S. Deputy Surveyor, do solemnly swear that in pursuance of instructions from Theodore

Wagner, U. S. Surveyor General for the State of California, bearing date the 23d day of September, 1878, and approved by the Hon. Commissioner of the General Land Office, Oct. 8, 1878, and in strict conformity to the laws of the United States, and the said instructions from the Surveyor General, I have well and faithfully surveyed the boundary lines of the Rancho Jurupa, situated in the county of San Bernardino, in the State of California, and finally confirmed to Abel Stearns, and I do further solemnly swear that the foregoing are the true and original field-notes of said survey.

WM. MINTO,
U. S. Deputy Surveyor.

Subscribed by said Wm. Minto, U. S. Deputy Surveyor, and sworn to before me, a Justice of the Peace in and for the county of Los Angeles in the State of California, this 4th day of November, 1878.

ALEXANDER BAILEY,
J. P., in and for the Co. of Los Angeles.

[Endorsed]: 1360. c. R. 16/11/78. Jurupa (Stearns). Field-notes of Minto's survey in Oct. and Nov., 1878, under contract, approved Oct. 8, 1878. 268. Platted W.

Los Angeles, July 10, 1878.

Hon. U. S. Surveyor Genl., San Francisco.

Dear Sir: If the time within which to file objections to the recent survey of the Rancho Jurupa in San Bernardino made by Mr. Minto has not elapsed, please send us at your earliest convenience by Express C. O. D., a

certified copy of the plat of said survey and also be good enough to inform us within what time objections have to be filed.

Very truly yours,

THOM & ROSS.

[Endorsed]: (268.) 121. c. Jurupa (Stearns.) Thom & Ross, July 10, '78. Wants copy made of Minto's survey and information as to time when protests should be filed. R. July 12, '78. A. July 13, '78. A. July 22, '78.

D.

Lawyer L. H.

DEPARTMENT OF THE INTERIOR. W. R. I.
GENERAL LAND OFFICE.

Washington, D. C., April 11, 1879.

Theo. Wagner, Esq., U. S. Surveyor General, San Francisco, Cala.

Sir: You are requested to at once procure and transmit to this office in the case of the rancho "Jurupa" a certified copy of the order or decree of the U. S. District Court, Southern Dist. of California, substituting as claimant Abel Stearns in place of Juan Bandini, also a certified copy of the mandate of the Supreme Court of the United States in this case.

Respectfully,

J. A. WILLIAMSON,
Commissioner.

[Endorsed]: (268.) 3.162 c.R. 19/4/79. Commr. Genl. and Ofc. April 11, 1879. Wants ctfd. copy order substi-

tuting Stearns for Bandini and copy mandate Supreme Court. Jerupa Stearns.

WILL D. GOULD,

Attorney at Law.

Rooms 82 and 83 Temple Block,

Los Angeles, Cal., May 24th, 1880.

Theo. Wagner, U. S, Surveyor General, San Francisco, Cal.

Dear Sir. Will you please inform me whether the fractional section 29, T. 2 S., R. 5 W., S. B. M., was in April, 1871, within the exterior limits of the Jurupa Rancho, or of any Spanish or Mexican Grant? If yes, when was the grant within the exterior limits of which said land was claimed, finally surveyed or the survey finally approved?

Very respectfully,

WILL D. GOULD.

P. S.—The above desired information will be of great value to me if received soon, and I will be greatly obliged if you will answer at your earliest convenience.

W. D. G.

[Endorsed]: 3.596. e. R. 26/5/80. Will D. Gould. May 24, 1880. Relative to Sec. 29 of T. 2 S., R. 5 W., S. B. M. Jerupa Rancho.

D. L. H.

DEPARTMENT OF THE INTERIOR. W. R. J.

GENERAL LAND OFFICE.

Washington, D. C., Mch. 22, 1879.

Theo. Wagner, Esq., U. S. Surveyor General, San Francisco, Cala.

Sir: I transmit to you herewith a copy of a letter to this office from the Hon. Secretary of the Interior, dated 11th instant, directing a hearing in the matter of the survey of the California rancho "Jerupa" Abel Stearns, confirmee.

As said letter fully explains itself it is not deemed necessary that you should be specially instructed as to your duties in the premises. It is desired, however, that the matter be proceeded with at once and for this reason you are instructed upon the receipt of this letter to give the parties in interest notice of the purport of the Honorable Secretary's letter, above referred to, and fix a day for the hearing.

The testimony received by you will be confined to the location of the Springs of Guapau and the question whether the Springs of Gasper are identical with those of Guapau, also the location of Bandini's house, the bend in the river and the "First white sand bank" in the direction of Cucamonga.

When the hearing is concluded you will forthwith transmit to this office the testimony taken with your report in the matter.

Please acknowledge the receipt.

Respectfully,

J. A. WILLIAMSON,

Commissioner.

[Endorsed]: 268. 2561 c. R. 31/3/79. Commr. Genl. Land ofc. March 22, 1879. Ordering hearing relative to certain calls on west boundary of Jurupa (Stearns). See Commrs. telegram of March 31, 1879. (2579c).

Copy.

DEPARTMENT OF THE INTERIOR.

Washington, March 11th, 1879.

Sir: I am in receipt of your letter of the 3d instant transmitting two plats of survey of the Jurupa Rancho in California, together with the report of the Surveyor General of California relative thereto.

The history of the case is given at length in your report, and no doubt the plat of survey containing 33,819-11/100 acres correctly establishes the western boundary in accordance with your decision of May 13, 1876, affirmed by my predecessor February 21, 1877.

On the 28th of December last, the Surveyor General of California reported that after a personal examination upon the ground he became satisfied that the said western boundary was located too far west. If such is the fact, it is the result of an error in correctly locating the Springs called "Gaupau" or "Gaspar" in the decree of

juridical possession, and the degree of confirmation by the District Court. In the former decree both in Spanish and in the translation, and in the decree of the Board of Land Commissioners, they are mentioned as the Springs of Guapau.

In the decree of the District Court they are mentioned as the springs of Gaspar.

In the decree of juridical possession the southern boundary is described, and then the following language occurs "which" (viz: the Southern boundary) "terminated at the point of the same table land where Mr. Bandini has established the house and where the said river makes a turn. * * * Thence extending the cord course South to North in front of the mountain of Cucamonga there were measured and counted seven thousand varas crossing between the two springs of Guapau which terminated at the first white sand bank which is in said course to Cucamonga."

The Board of Land Commissioners confirmed the claim in 1854.

In the decree of confirmation the Southern boundary is given and then the following language occurs: "terminating" (viz: the Southern boundary line): "At a point of table land and where the river makes a turn, thence north in front of the mountain Cucamonga seven thousand varas passing between the two springs called Gaupau terminating at the first white sand bank in the course last aforesaid."

The judgment of the District Court rendered in 1861 was, "that the said decision of the said Board of Land Commissioners be and hereby is affirmed."

In the decree of the court the following language occurs: "The lands of which confirmation is hereby made are those known as 'Jurupa' situated in the county of San Bernardino, to the extent of eleven square leagues and no more, within the boundaries designated in the juridical possession given of said lands to Juan Bandini; the act of testimonial whereof is on file in the case."

In the decree the boundaries of the land are given. After describing the southern boundary, the western terminus of which is "the point of the same table land on which Mr. Bandini had established his house, and where the said river makes a bend," the western boundary is given as follows: Thence "northerly fronting towards the mountains of Cucamonga seven thousand varas, passing between the two springs of Guspar ending at the first white sand bank which there is on said course towards Cucamonga."

The papers in the case seem to indicate that the western boundary should be a line run between the two springs of Guapau. It is evident that in the preparation of various copies of the original papers the springs are called Gaspar or Guspar in the decree of the court, but there can be no doubt whatever, as to what landmarks or natural objects were intended to be designated by the authorities who gave the juridical possession, the Board of Land Commissioners and the district court. The identical objects are designated in the three decrees.

On the plat of survey, before mentioned, the line of the western boundary established as directed by the Department, passes between the springs of Gaspar.

If the springs of Gaspar are identical with the springs of Guapau, no further action should be taken in the case, but if not, the true line of the western boundary should be established if possible.

The Surveyor General in his report gives good and satisfactory reasons, if based on a correct statement of facts, why the western boundary established in compliance with the decision of the Department, is not the boundary line established by the granting authorities, or by the confirmatory tribunals.

This report, however, cannot be taken as the basis of a modification of the former decision of the Department, but it does constitute a good foundation for an order for a further investigation as to the correct location of the western boundary line. Hon. Montgomer Blair, attorney for the confirmee, alleges that the case is res judicata, that the former decision of my predecessor is final, and that the case should not be reopened. I cannot concur in this view. Since said decision new and important evidence has been presented, and if the facts alleged are true, that decision was erroneous.

The Department is now called upon to approve a survey and issue a patent for lands, and that duty cannot be correctly performed until certain facts are established. You are hereby instructed to order a hearing to ascertain facts in relation to the location of the western boundary.

Evidence should be submitted as to the location of the springs of Gaupau and secondly, whether the springs of Gaspar are identical with those of Gaupau.

In this connection evidence as to the location of Bandini's house, the bend in the river, the first white sand bank in the direction of Cucamonga, may be legitimately introduced.

Due notice should be given to all parties in interest. In view of the character of the evidence to be submitted, and in order to avoid expense, the hearing may be held on the ground as or near thereto as is practicable. The evidence should be confined to the location of the springs in question, and the house of Bandini, the bend in the river, and the first white sand bank in the direction of Cucamonga. No evidence relative to the other boundaries of the grant should be submitted. When the evidence is received at your office, should it be found that the plat above mentioned correctly locates the western boundary, the same should be approved. Should it be found that the plat transmitted by the Surveyor General December 28th last, containing 32,259, 16/100 acres correctly locates said boundary the same should be approved or if necessary a new line should be run.

The papers in the case are herewith returned.

Very respectfully,

C. SCHURZ,

Secretary.

The Commissioner of the General Land Office.

[Endorsed]: 2561. c. R. 31/3/79. Copy. Letter from Hon. Secretary of the Interior to Comr. Genl. Land ofc.

Relative to Western Boundary of the Jurupa Rancho (Stearns). Recd. with Commr.'s letter of March 22, 1879.

U. S. District Court, Southern District, of the State of California.

JUAN BANDINI,
Appellee,
ads
THE UNITED STATES,
Appellants.

In the above case Abel Stearns having moved the court to substitute his, the said Stearns, name as appellee in place of that of said Juan Bandini, and it being satisfactorily shown to the Court that the lands herein claimed were conveyed in absolute fee to said Stearns by the said Bandini by conveyance duly executed and acknowledged by said Bandini in his lifetime and Refugio, his wife, the said motion is granted.

And it is ordered that all further proceedings in this cause be conducted and entitled in the name of said Stearns as appellee.

[Endorsed]: Filed in office this 6th March, 1860.

C. SIMS, Clk.

I, Southard Hoffman, clerk of the District Court of the United States for the District of California, do hereby certify the foregoing to be a full, true and correct copy of an order substituting Abel Stearns for Juan Bandini as appellee in the case of Juan Bandini ads the

United States (No. 213 S. D.) on file and of record in my office.

Attest my hand and seal of said District Court this 22 day of April, A. D. 1879.

[Seal] SOUTHARD HOFFMAN,
Clerk.

I, Theo Wagner, U. S. Surveyor General for the District of California, do hereby certify the foregoing and annexed, to be a full, true and correct copy of a document now on file and of record in my office.

Attest my hand and the seal of the United States Surveyor General's Office, this 22d day of April, A. D. 1879.

THEO. WAGNER,
U. S. Surveyor General, District of California.

[Seal of the Surveyor General's Office, Dist. of California.]

[Endorsed]: 268. Rancho Jurupa. Abel Stearns, Confirmee. Order substituting the name of Abel Stearns in place of Juan Bandini.

UNITED STATES OF AMERICA—ss.

The President of the United States of America, to the Honorable the Judge of the District
[Seal] Court of the United States for the District of California, Greeting:

Whereas, lately in the District Court of the United States for the District of California, before you in a cause between the United States and Abel Stearns, substituted for Juan Bandini, wherein the decree of

the said District Court entered in said cause was in favor of the said Abel Stearns, substituted for Juan Bandini, and against the said United States--whereupon the said United States prayed on appeal to the Supreme Court of the United States as by inspection of the certificate of clerk of the said District Court under the seal of said court, which was brought into the Supreme Court of the United States agreeably to the act of Congress and the rules of the said Supreme Court in such case made and provided, fully and at large appears. And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and seventy-four, the said cause came on to be heard before the said Supreme Court, and it appearing that the said appellant has failed to have its cause filed and docketed in conformity to the rules of this Court, it is now here ordered, adjudged and decreed by this Court that this appeal from the District Court of the United States for the District of California, be and the same is hereby docketed and dismissed.

And it is further ordered that this cause be and the same is hereby remanded to the said District Court.

8th January, 1875.

You therefore are hereby commanded that such proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had the said appeal notwithstanding.

Witness the Honorable MORRISON R. WAITE, Chief Justice of said Supreme Court, the —— day of

February, in the year of our Lord one thousand eight hundred and seventy-five.

D. W. MIDDLETON,

Clerk of the Supreme Court of the United States.

[Endorsed]: Presented and filed in open court on motion of L. D. Latimer, Esq., Attorney for Claimant, this 2d day of March, A. D. 1875. Edwd. B. Cotter, Clerk U. S. District Court. Dist. of Cala. By A. D. Grimwood, Deputy Clerk. (Seal).

I, Southard Hoffman, clerk of the District Court of the United States for the District of California, do hereby certify the foregoing to be a full, true and correct copy of the mandate of the Supreme Court of the United States in the case of The United States vs. Abel Stearns (No. 213. S. D.), on file and of record in my office.

Attest my hand and seal of said District Court, this 22d day of April, A. D. 1879.

[Seal] SOUTHARD HOFFMAN,

Clerk.

I, Theo. Wagner, U. S. Surveyor General for the District of California, do hereby certify the foregoing and annexed to be a full, true and correct copy of a document now on file and of record in my office.

Attest my hand and the seal of the United States Surveyor General's office, this 22d day of April, A. D. 1879.

THEO. WAGNER,

U. S. Surveyor General, District of California.

[Seal of the U. S. Surveyor General's Office, California.]

[Endorsed]: 268. Rancho "Jurupa." Abel Stearns, Confirmee. Mandate Supreme Court, Dismiss in Appeal.

D. L. H.

J. M. A.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.

Washington, D. C., February 28, 1878.

J. W. Ames, Esq., U. S. Surveyor General, San Francisco, California.

Sir: In the matter of the contested survey of the Rancho "Jurupa," Abel Stearns, confirmee, I enclose herewith a copy of the report of this office to the Hon. Secretary of the Interior, dated January 28, 1878, and of the decision of the Department, dated 6th instant, and you are instructed to proceed at once to have said survey modified in conformity therewith.

In this connection you are specially enjoined to see that great care is exercised in reforming the eastern and southern boundaries of the Reynolds Survey of said rancho, made in 1869, so as to make it conform to the retracing of those boundaries by Goldworthy and Higbee, in 1870, as represented on claimant's exhibits B. and C., tracings of which are herewith enclosed and at the same time to close the public surveys upon the boundaries to be thus established, so soon as the survey of those boundaries shall have been completed.

You will also give instructions for the resurvey of the northern boundary in conformity with the decision

of this office of May 13, 1876, as affirmed by the Honorable Secretary of the Interior, February 21, 1877.

Respectfully,

J. A. WILLIAMSON,

Commissioner.

[Endorsed]: Jurupa (Stearns). Commr. Genl. Land Office, Feby. 28, 1878. Inclose copy of his report dated Jany. 28, 1878, to Hon. Secty. Interior and copy of Secty.'s reply, dated Feb. 6, 1878, and directs resurvey of the North Bndy. and reforming of south and east Bndris. 268. Recd. March 11th, 1878.

Copy.

DEPARTMENT OF THE INTERIOR.

Washington, Feb. 6th, 1878.

Sir: I am in receipt of your report, dated the 28th ultimo in the matter of the survey of the Jurupa Rancho, and also of the report of the Surveyor General of California on the same subject.

It appears that all parties in interest desire that the survey of the Rancho, as made by Deputy Surveyor Reynolds in 1869, and retraced by Messrs. Goldsworthy and Higbee, in 1870, as represented on Exhibits "B" and "C" filed with the case be established as the final survey of the claim.

All the parties in interest unite in this request and its adoption is recommended by the Surveyor General, and by your office. I am of the opinion that to pursue this course will be for the best interests of all parties, the Government, the settlers, on the public lands, the

confirmee and those who desire title from them. The recommendation of the Surveyor General contained in his report of the 10th of October last, is approved and you will accordingly give the necessary instructions to establish the eastern and southern boundary as delineated on Exhibits "B" and "C," above referred to.

The survey of the public lands adjoining the rancho on the east and south should be completed at the time the said boundaries are established. This compromise being in the interest of all parties, care should be exercised that its stipulations are faithfully carried into effect.

The decision of this department dated February 21, 1877, is modified accordingly.

The papers in the case are herewith returned.

Very respectfully,

C. SCHURZ,
Secretary.

The Commissioner of the General Land Office.

[Endorsed]: 268. Jurupa (Stearns). Copy letter Secty. Interior to Commr. Genl. Land Office. Feb. 6, 1878. Accepting compromise line as recommended by Commr. and Surv. Genl.

Riverside, San Bernardino County, Cal., May 14, 1877.

Hon. H. G. Rollins, U. S. Surveyor General for Cal.

Sir: In the matter of the location of the "Pachappa" the initial point of the survey of the Jurupa Rancho where all parties before you stipulated to adhere to the east line as surveyed by Wm. P. Reynolds, we con-

fidently believed that the question was settled and finally disposed of.

I signed the stipulation for the settlers with that understanding as you know, and I have no doubt you understood the matter as we did, when you said to me at that time that you "never had any doubt that the 'Pachappa' we were contending for—the one mentioned in the Reynolds Survey—was the true one."

And when Mr. Hopkins talked so strongly in favor of retaining the Reynolds line and read to Mr. Brown and myself his report on the subject, I could not doubt that the question was settled, and that your report would end the matter effectually.

It is true that there were passages in Mr. Hopkins' report that seemed to bear against what he urged in other parts of it, and when I remember that it was upon his previous report that the Commissioner's unfavorable decision was based, I had some little misgivings as to the future, and when you informed me that "Mr Felton did not wish you to send the papers to Washington until he should see you again" I thought of possibilities; but could not believe that there was any other than an honest intention to carry out the stipulation in good faith.

But when I returned home I found that Captain Sayward was working here, through his witness and surveyor, Mr. Newman, and the officers of the company, to accomplish his purpose of removing the Pachappa, the same as before he signed the stipulation. But the president of the company professed to have been mis-

led by Captain Sayward and all efforts in that direction seemed to cease.

The officers of the company were anxious to get some corrections of Reynolds Survey; and led me to believe that there were some slight errors that needed correction in order to make the east and south lines correspond to what we had always believed them to be I therefore induced the settlers to consent that I should sign the second stipulation as "In addition to" and "explanatory of" the first. After this paper was signed and as I am told forwarded to you, Mr. Felton was here and visited New Pachappa—pronounced in favor of it and said that "Mr. Hopkins was going to report strongly in favor of it, and that he had no doubt the change would be made." The effort to keep this fact from me excites my suspicion and also that of the settlers. We have acted in good faith, while they seem to be acting with duplicity. You will pardon me therefore for making a few inquiries on behalf of the settlers.

1. We are desirous of knowing whether any recommendation has gone or is going from your office to the Commissioner of the General Land Office in favor of a change of the Pachappa as the initial point of the survey of the Jurupa Rancho?

2. Are there any depositions, affidavits or evidence filed in the case, or sent to Washington, other than the testimony taken when we were all at your office?

3. Is there any attempt now being made to have the Reynolds Survey—field-notes so changed as to remove

the Pachappa as desired by Calt Sayward and Mr. Felton?

Many settlers, whose homes are involved in this question are anxiously awaiting information on these points.

Very respectfully
Your Obedient Servant,
J. W. NORTH,
Attorney for Settlers.

[Endorsed]: Jurupa (Bandini). Letter J. W. North, May 14, '77. Relates to location of "Pachappa" and Reynolds east line. 268.

U. S. District Court, District of California.

ABEL STEARNS, Substituted for JUAN BANDINI,
Appellee,
ads.
THE UNITED STATES,
Appellant.

* * * * * * * * *

May 1, 1862. Entered order of appeal (papers sent up by Dist. Atty.).

March 2, 1875. Order that mandate from Supreme Court be filed and that claimant proceed under order of confirmation as under final decree.

Filed order.

Filed mandate from Supreme Court of U. S. dismissing appeal.

District of California—ss.

I, Southard Hoffman, clerk of the U. S. District Court for the District of California, do hereby certify that the foregoing is a true copy of each and every one of the entries in the Register of Land Cases for the Southern District of California, on page 406 of said Register, made since October 23d, 1861, in the case of the United States vs. Abel Stearns, substituted for Juan Bandini, No. 213, S. D., which said register is now in my custody and a record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court this 22d day of July, A. D. 1878.

SOUTHARD HOFFMAN,
Clerk.
By A. D. Grimwood,
Deputy Clerk.

[Seal of the U. S. District Court, Dist. of California.]

[Endorsed]: Jurupa (Bandini). Minutes of Proceedings since Oct. 23, '61, in District Court. 268.

U. S. Sur. Genl.'s Office,
San Francisco, Sept. 1st, 1858.

Sir: Whereas, in the claim of Luis Robideau to the tract of land called Jurupa, the decision of the Board of Land Commissioners has become final and notice is given by the Attorney General that no appeal will be further prosecuted therein. I have thought proper

to appoint you my deputy in this special case for the execution of the final survey thereof.

The decree confirms the tract to the following effect: "The land of which confirmation is made is situated in the county of Los Angeles and is a part of the place granted to Juan Bandini by Govr. Alvarado, in Sept., 1828, by the name of Jurupa, which place is bounded as follows, to wit: Commencing at a mound called Puchappa, with a pile of stones placed thereon running west on the bank of the river 30,000 varas, terminating at a point of table-land and where the river makes a turn; thence north in front of the mountain Cucamonga, seven thousand varas, passing between the two springs called Guafran, terminating at the first white sand bank in the course last-mentioned; thence east thirty thousand varas to a small isolated mountain to the left of the road running from San Gabriel to San Bernardino; thence south to the place of beginning.

The portion of the premises above-described of which confirmation is hereby made to said Roubidaeu is bounded and described as follows, to wit: Being about one and one-half leagues in extent within the boundaries which are the meeting of the aqueduct which comes from the Jurupa on the east side of the river upon a line run towards the north inclining westwardly up to the Porterzuela del Chamisal; thence in an easterly direction along the boundary of the lands granted conditionally to the New Mexicans to the table-land of the same Jurupa, and taking a course nearly south until meeting with the Cañada del Tequesquete, and hence following down the Cañada running up to the

first mentioned aqueduct and following the latter to its junction with the river from which place the assignment of the boundary herein specified commenced.

You will make your survey in strict accordance with the decree above-mentioned and in executing the work and making return thereof you will be guided by my general instructions dated September 1st, 1858.

You are not permitted to receive compensation from any party other than the United States for making this survey.

Respy.,

J. W. MANDEVILLE,
U. S. Sur. Genl.

Hy. Hancock, Esq., Deputy. Sur.

[Endorsed]: Survey No. 570. Jurupa. Instructions for Final Survey. Hy. Hancock, Dep. Sur. 268.

"D." W. D. S.

R. B. K.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.
Washington, D. C., Sept. 25th, 1876.

U. S. Surveyor General, San Francisco, California.

Sir: Referring to your letter of January 2d, 1874, transmitting the report of Mr. R. C. Hopkins and a diagram in the case of the Jurupa Rancho in California, Juan Bandini, Claimant, I have to state that said report and diagram have been mislaid and you are therefore requested to furnish this office with a certified copy of each without delay.

Respectfully,

U. J. BAXTER,
Acting Commissioner.

[Endorsed]: G. L. O. Sepr. 25, 1876. Wants copy of Hopkins Report and Diagram in case of Jurupa Rc'ho. 268. Oct. 4, 1876. Sent Original Report and Diagram.

D. L. H.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.

Washington, D. C., May 29, 1879.

Theo. Wagner, Esq., U. S. Surveyor General, San Francisco, Cala.

Sir: I herewith transmit to you for delivery the patent dated May 23d, 1879, for the private land claim in California, known as the Rancho "Jurupa," Abel Stearns, confirmee.

Before delivering this patent you will collect from the claimants to be deposited to the United States on account of the different surveys of said rancho, the sum of $1288 12/100, and in addition thereto any office work which has not been paid for.

It is presumed that the first survey of this rancho, that made by Reynolds in June and July, 1869, was paid for by the claimants in the manner provided in the 6th section of the act of July 1, 1864.

Please acknowledge the receipt of the patent.

Respectfully,

J. A. WILLIAMSON,
Commissioner.

[Endorsed]: Commr. Genl. L. O. May 29, 1879. With patent for Jurupa, Stearns. Collect for surveys and O. W.

E. C. O. B.
S. J. D. R.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.
Washington, D. C., Aug. 10, 1876.

H. G. Rollins, Esq., U. S. Surveyor General, San Francisco, Cal.

Sir: In reply to your letter of 27th ult. I have to inform you that the contract and bond dated June 29, 1876, with Geo. H. Thompson, for the survey of Rancho Jurupa, Abel Stearns, confirmee, has been approved and placed on file in this office.

Very respectfully,
J. A. WILLIAMSON,
Commissioner.

E. C. O. B.
L. J. D. R.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.
Washington, D. C., Aug. 12th, 1876.

H. G. Rollins, Esq., U. S. Surveyor General, San Francisco, Cal.

Sir: Referring to my letter of the 10th inst, I have to inform you that because of the appeal in the case of Rancho Jurupa, Abel Stearns, confirmee, the contract with G. H. Thompson, dated June 19th, 1876, for the survey of said rancho must remain suspended.

You will therefore consider the approval of the same revoked.

Very respectfully,
Your obdt. servt.,
J. A. WILLIAMSON,
Commissioner.

[Endorsed]: Commr. Genl. Land Office. Letter Aug. 12th, 1876. Geo. H. Thompson, contract for the survey of the Rancho Jurupa suspended. Enclosing Commr's letter of Aug. 12th, relating to the same contract.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.
Washington, D. C., 10th Sept., 1872.

J. R. Hardenbergh, Esq., U. S. Surv. Genl. Cala., San Francisco.

Sir: Referring to our letter of 8th ult. in reference to the Rancho "Jurupa" in Cala., L. C. 361—and your reply of 30th ult., I have again to request that you procure from the clerk of the U. S. District Court at the expense of the parties in interest and forward the same to this office, a certified copy of the final decree on title.

Very respectfully,
WILLIS DRUMMOND,
Commissioner.

Jurupa—Things to be Done.

The old plat of Roubideaux tract by Hancock was withdrawn and does not agree with that of Reynolds—

Reynolds has surveyed around the Roubideaux tract but has never returned any separate field-notes and probably will not till some one pays him for it—it must then be platted and advertised.

In order to make the Jurupa survey final so far as Roubideaux is concerned some document of assent to Reynolds' survey must be filed in the Jurupa case—

See how the Rancho Santa Ana del Chino stands as to finality.

Draw some definite line on the plat for the western boundary according to Sur. Genl.'s opinion.

Send up map for Commissioner's opinion.

Copy Reynolds' field-notes.

Copy part of juridical possession (?)

Decrees—certif. adv., etc.

[Endorsed]: Jurupa. Things to be done. No. 268. Copy of mem. in the handwriting of Sherman Day.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.
Washington, D. C., August 16th, 1873.

J. R. Hardenbergh, Esq., U. S. Surveyor General, San Francisco, Cal.

Sir: In the matter of the survey of the Rancho Jurupa, Stearns, confirmee, it appears that the final decree on title calls for the following natural objects as boundaries:

1st. Pachappa Hill.

2d. Thence along the river bank, "To the point of the same table-land on which Mr. Bandini had established his house," and where the river makes a bend.

3d. Thence north passing between the springs of Guapur to the "First white sand bank."

With respect to each of these natural objects I have to direct that you cause the same to be examined on the ground and report to this office as early as practicable.

1st. The location of the hill Pachappa, and if any other hill than that shown on the survey by U. S. Depy. Surveyor Reynolds in June and July, 1869, will answer this call of the decree. And in this connection I call your attention to the records of juridical possession in the case of the Rancho La Sierra, Vicente Sepulveda, confirmee, in which this hill seems to be called for as a boundary of the lands of B. Wilson or what is now known as "Part of Jurupa," Rubideaux, confirmee.

2d. The character of the land south of the river Santa Ana and within the present survey of the Jurupa Rancho, and the exact location of the south bank of said river. From the field-notes of the Jurupa survey it seems that U. S. Deputy Surveyor Reynolds has surveyed south of the river bank so as to include the river bottom, and it is important to know whether or not, the Santa Ana River has any well-defined southern bank north of the southern line of Jurupa.

3d. The location of Bandini's house referred to in the final decree on title in this case.

4th. The location of the "First white sand bank," mentioned in said final decree, and the character of said bank at a point reached by running a straight line from the southern point of course 22 north, passing be-

tween Gaspar Springs, as said course, and springs are shown on the official plat of survey in this case.

In the matter of the part of Jurupa, confirmed to Louis Rubideaux, I have also to direct that you cause to be examined on the ground, and report to this office the location of the "Sanjon or Aqueduct" located at the southeast corner of the official survey of said rancho.

In submitting your report upon the natural objects as above you will please accompany the same with a diagram of both ranchos, showing the said objects as found at the date of examination hereby ordered, and should you deem it advisable not to make such examination in person, but to designate some one to perform that duty, the report of the party designated should be made under oath. The field-notes and decrees in both of the ranchos above named are herewith enclosed. You will please return them with your report in said cases.

Very respectfully,

WILLIS DRUMMOND,

Commissioner.

Copy.

DEPARTMENT OF THE INTERIOR,

OFFICE OF THE SECRETARY.

Washington, D. C., Feb. 21st, 1877.

Sir: I have considered the case of the private grant, Jurupa, confirmed to Abel Stearns, in California, on appeal from your decision of May 13, 1876, ordering a new survey.

The facts in the case are fully set forth in your decision. The first important point to determine is the true location of the hill "Pachappa" the point of beginning in the survey. You hold that the point established by Deputy Surveyor Reynolds is the correct one —he reports as follows, "beginning at an old stone mound at the northwest foot of a small hill standing alone on the plan near the head of the cañada, called 'Tequesquite,' said hill being a notable object and is called by the Indians 'Pachappa,' a high detached hill." This statement is supported by the evidence of Mr. Hopkins who examined the ground, under instructions from your office.

In the decree of juridical possession the following description of the point of beginning is given, "After previous observation and calculations for my direction, the cord was extended to the foot of the little mountain which stands alone at the aforesaid Cañada, which the Messrs. Yorba had established for a boundary to the other side of the river of Jurupa, which little mountain the Indians in their language call Pachappa, and which was taken for a landmark, placing on it a pile of stones, course east to west, there were measured and counted along the bank of said river thirty thousand varas."

In the decree of confirmation the point of beginning is mentioned as a "Mound called Pachappa," with a pile of stones placed thereon, running west on the bank of the river thirty thousand varas.

In the appeal from your decision it is claimed that the correct location of the "Pachappa" hill is to the

east of the point established by Surveyor Reynolds and in support of this position Wm. T. Sayward files an affidavit in which the following statement appears:

"I am acquainted with the Jurupa Rancho as surveyed by Wm. P. Reynolds, and know his point of beginning. I have examined the land east of his point of beginning and am satisfied his 'Pachappa' hill is not the true Pachappa. The true Pachappa is a prominent lone mound standing on the bank of the cañada some one and a half miles nearly due east from his point of beginning and is nearly directly south from Talamalcay or Selover mountain. From the true Pachappa taking it as the starting point, and running thence west along the bank of the Santa Ana River, to the high table-land opposite the mountain called 'Cucamonga' the distance will be near thirty thousand varas and would accord with the call of the decree while the distance as surveyed by Reynolds is only 25,546 varas. I have been on top of the true 'Pachappa' and found there a mound of rocks some eight or ten rocks piled on other rocks. On the top of it is a flat rock covered over with moss, it appears to be an ancient landmark."

In view of the statements made by Sayward, and of the interest involved, the Surveyor General should be instructed to receive evidence on this point.

You will instruct him to receive such evidence, with notice to all parties in interest and also instruct him to employ an expert to make an examination on the ground of the points in dispute.

When the report is received and examined you will instruct the Surveyor General to make the resurvey, commencing at the point to be indicated by you as the true "Pachappa" hill, and in conformity with the directions contained in your decision of May 13, 1876, which is affirmed in all particulars with the exception of the one indicated above.

The papers transmitted with your letter of October 20, 1876, are herewith returned.

Very respectfully,

Z. CHANDLER,

Secretary.

The Commissioner of the General Land Office.

[Endorsed]: Jurupa—Stearns. Decision Secty. Interior. Feby. 21, 1877.

Copy.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE.

Washington, D. C., January 28, 1878.

Hon. C. Schurz, Secretary of the Interior.

Sir: Referring to the decision of the department dated February 21, 1877, affirming the decision of this office in the matter of the survey of the Jurupa Rancho, Abel Stearns, Confirmee, "in all particulars with the exception" of the southeast corner as located by the official survey and directing this office to instruct the Surveyor General of California to receive further evidence in regard to the true locus of said southeast corner and also to send an expert into the field to make a personal examination of the point in dispute, I now

have the honor to report the following proceedings had pursuant to the aforesaid instructions.

It appears that in accordance with the instructions of this office dated February 28, 1877, that the Surveyor General on the 13th of March, 1877, caused a notice fixing a time and place for a hearing to be published and in pursuance thereof commenced taking testimony on the 27th of the same month. By a stipulation filed March 29th, 1877, entered into by W. T. Sayward for Riverside Land and Irrigating Company and Southern California Colony Association; H. S. Brown, Attorney for the Southern Pacific Railroad Company, Charles N. Felton and the settlers adjoining the disputed eastern boundary by their attorney, J. W. North, which includes all the parties to the contest except Alfred Robinson, trustee of Abel Stearns, the eastern boundary of the Jurupa Rancho, as located and surveyed by the present official survey was adopted and agreed upon as a compromise line and the testimony in the case by virtue thereof was closed on the following day, with the understanding that the taking of the testimony was to be resumed if the department refused to ratify said stipulations.

This stipulation is supplemented by another made at a latter date which purports to be explanatory of the former signed by the same parties and also by Alfred Robinson as trustee. It covers substantially the same grounds that the first one does—the explanatory matter contained therein relating to certain alleged discrepancies between the survey executed by Reynolds and the re-

tracing of the lines of said survey at a subsequent date by Goldsworthy and Higbee for the owners of the grant.

It further appears that pursuant to the instructions of the Surveyor General under the aforesaid general instructions from the Department and this office that Mr. R. C. Hopkins made a personal examination on the ground in regard to the location of the Pachappa hill of the Jurupa surveys; that as the result of his examinations he found that the hill adopted by the said survey as the southeast corner thereof does not answer the call of the decree of confirmation as fully as the hill now claimed as the Pachappa hill of the Juridical possession—In this connection I deem it proper to state that on a previous occasion when Mr. Hopkins was sent into the field by the Surveyor General under instructions from this office dated August 16, 1873 to make an examination of the various natural objects or landmarks called for in the decree of confirmation as boundaries he then reported in favor of the hill upon which the southeast corner of the present survey rests as being the true Pachappa hill.

The supplemental stipulation hereinbefore alluded to refers to the "accompanying plat and field-notes" as demonstrating the necessity for such a correction of the survey on the eastern and southern boundaries in accordance with the retracing of the lines of the original survey as will save the claimants under the confirmation their improvements.

The nature and effect of the discrepancies above alluded to are more fully set forth and the documents or

papers in explanation thereof specifically referred to in the protest dated May 4, 1877, of the Riverside land and irrigating company in which it is stated that subsequent to December, 1870, Goldsworthy and Higbee retraced the lines of the Reynolds survey and also of the adjoining public surveys in Tp. 2 S. of R. 5 W. the township lines are evidently referred to as this township has not been subdivided that it was supposed until the recent examinations that said retracing conformed to the lines of the original surveys; that the plat of said retracing was duly recorded in the county recorder's office and all of the sales made by the company and the public lands adjoining were taken up in accordance with the lines of said retracing. In this protest the accompanying plat marked Exhibit "C" is referrd to as showing the location of the lands purchased from said company and of the lands occupied by settlers adjoining the grant. Reference is also made to the accompanying plat and explanatory notes prepared by G. O. Newman after an examination in the field of the work of Deputy Surveyor Reynolds and Goldsworthy and Higbee marked Exhibit "B." Said protest connects Exhibit "B" with the supplemental stipulation or agreement and urges the adoption of the lines retraced by Messrs. Goldsworthy and Highbee as aforesaid as represented on said plat. It is only by taking all of these papers together that we can get an intelligible view of the points intended to be covered by the stipulation in the case.

The solid red lines on the plat or diagram marked Exhibit "B" purport to represent a protraction on a scale

of twenty chains to an inch of the Reynolds survey, said protraction being based upon the courses and distances without reference to the Natural land marks stated in the field-notes of said survey. The blue lines on said exhibit purport to represent the retracing of said Reynolds survey by Goldsworth and Higbee and also the subdivision lines by which sales were made to individuals within the exterior limits of the grant as they are connected with the aforesaid retraced exterior boundaries. The black lines represent the public surveys.

It is alleged in the explanatory notes that the red lines starting at the angle or corner south of the place marked the southwest corner of the San Bernardino Rancho and running thence south to the point marked "C" at the southern foot of the Pachappa hill as represented on the exhibit is a correct protraction according to the course and distance given in the field-notes of the eastern line of the Reynolds survey. The dotted red line on the south between the terminal point of the eastern line "C" and the point marked "F" I imagine to be nothing more than an imaginary line connecting those two points.

Testing the accuracy of the various lines above described as represented on said Exhibit "B" with the lines of the public surveys they seem to be correct but when we test them by the natural objects the Pachappa hill and the Cañada de Tequesquita as located by the Reynolds survey and the retracing by Goldsworthy and Higbie we find a marked variance. The point marked on said exhibit as the "N. W. foot" northwest foot of the Pachappa hill represents the southeast corner of the

Reynolds survey; this point it will be observed is due west of the eastern boundary as located by the red line twenty-five chains and as located by the blue line twenty-two and a half chains and due north of the southern boundary as located by both the red and blue line about twenty chains. It will be noticed that both of said lines are nearly identical for a distance of about twenty chains from the southeast corner as repesented on the diagram.

It will also be observed that there is a considerable variance in the distance between the southeast corner of the Reynolds survey and the southern bank of the Cañada Tequesquite as they are represented on the *official plat* of the Reynolds survey and the diagram "B." The distance from the point marked on the diagram as the northwest fork of the Pachappa hill to the southern bank of said cañada measuring on a line parallel with the eastern boundary is ten chains on the official plat following the eastern line of the survey it is forty chains the description notes give it as forty-four chains.

To assume that the point marked on the diagram as the northwest foot is the southeast corner, a line projected from that point on a course of north twenty-nine degrees east which would be parallel with the present eastern boundary would intersect that portion of the eastern line of the survey running southeast from the Tagamalcoy hill at a point about ninety chains south of said hill and would cut off of the survey a strip of land about twenty-two chains wide by about five hundred chains long, embracing an area of one thousand one hun-

dred acres; and the projection of a line westward from the said point marked "S. W. foot" for the southern boundary would be followed by a similar result. A line run from said southwest foot of Pachappa hill as represented on said Exhibit "B" to the angle on the eastern line of the survey would reduce the quantity thrown off to one-half of that above stated or five hundred and fifty acres. This could not be done however . without a departure from the course north 29° east of the line of the official survey.

It will thus be observed that it is impossible to reconcile the retracing with the official survey.

There is but one way that I can see that these discrepancies can be explained or accounted for, a variance in the instruments that were used—chains and compasses—by the respective surveyors in doing their work. This is on the assumption that said surveyors were equally honest in the execution of their work and yet it seems scarcely credible that there could be so great a variance in both courses and distances.

I have perhaps dwelt longer than was necessary upon the discrepancies disclosed by the papers upon which the stipulations of the parties are based but as the case as presented seems to be made up principally of discrepancies and contradictions I deem it important to set forth all the facts in the case as fully as possible.

Taking into consideration the two reports of Mr. Hopkins in regard to the true locus of Pachappa hill, the first one locating it at the southeast corner of the Reynolds survey and the last one at a point about a mile and

a half east of the southeast corner of said survey, there still in my opinion exists considerable doubt in regard to the identity and location of the Pachappa hill called for in the final decree of confirmation as the southeast or beginning corner of the grant; and in view of the facts and circumstances set forth in the concluding pages of Mr. R. C. Hopkins last report of March 27, 1877, and in the Surveyor-General's letter of 10th of October last and in view of the further fact that the adoption of the compromise line agreed upon by all parties who are liable to be affected by any change, will settle all disputes and save the rights of the settlers within the disputed lines as well as the improvements of the grant owners and those holding under them. I concur with the Surveyor-General in his recommendation that said compromise line be approved as the eastern boundary of the grant.

The southern boundary as established by the Reynolds survey having been finally decided by the department the questions raised by the aforesaid stipulations relating to said boundary are, so far as this office is concerned *res adjudicata*. In this connection I will state for the information of the department that the township two south, five west within which the changes proposed by the said stipulations fall, have not been subdivided, and that it is stated that the settlements on the public lands adjoining the Jurupa rancho were made with reference to the retracing of said boundaries, southern and eastern of the Reynolds survey. This perhaps accounts for the willingness on the part of the settlers in agreeing to the proposed changes.

If the department should conclude not to approve the eastern boundary agreed upon as a compromise line, I would recommend that the case be returned to this office with instructions to remand it back to the Surveyor-General and to resume the taking of testimony where left off, when the stipulations were entered into by virtue of which it was closed.

Very respectfully,

Your obt. Servt.

J. A. WILLIAMSON,

Commissioner.

[Endorsed]: Jurupa—Stearns. Copy Report of Commr. Genl. Land Ofc. dated Jany. 28, 1878, to Secty. Interior. 268.

Answer Carter.

LAW OFFICE OF HORACE BELL.

No. 56 Temple Block.

Special Attention Given to Old Spanish and Mexican Claims.

Los Angeles, Cal., Sept. 18th, 1878.

Dear Sir: Please inform me what has been done if anything in regard to the "Jurupa Ranch" survey. Has it been sent back? If so for what purpose.

Respectfully,

HORACE BELL.

[Endorsed]: 268. 833 c R. 19/9/7. Jurupa (Stearns). Letter Horace Bell wants to know status of case. Ansd. Sepr. 20, '78.

PRELIMINARY OATHS OF ASSISTANTS.

I, ———, do solemnly swear that I will well and truly perform the duties of compassman, according to instructions given me, and to the best of my skill and ability, in the survey of the ———.

———

Compassman.

Subscribed and sworn to before me this —— day of ———, 188——.

———

———

We, Thos. White and Andrew M. Lawrence, do solemnly swear that we will well and faithfully execute the duties of chain carriers; that we will level the chain upon uneven ground and plumb the tally pins, whether by sticking or dropping the same; that we will report the true distance to all notable objects, and the true length of all lines that we assist in measuring to the best of our skill and ability.

THOMAS WHITE.

A. M. LAWRENCE.

Subscribed and sworn to before me this 23d day of March, 1878.

JAS. P. GREAVES,

Notary Public.

I, Charles Davies do solemnly swear that I will well and truly perform the duties of axman according to instructions given me, and to the best of my skill and ability.

CHARLES DAVIES.

Subscribed and sworn to before me this 23d day of March, 1878.

JAMES P. GRAVES,

[Notarial Seal] Notary Public.

————, do solemnly swear that —— will well and truly perform the duties of flagman, according to instructions given ——, and to the best of —— skill and ability in the survey of the ——.

_____

Flagman.

_____, _____

Subscribed and sworn to before me this —— day of ———— 188——.

_____

_____.

On the southeast slope of the hill called "Pachappa" I find a stake 60x4x4 in. in a stone mound at the intersection of the lines run by John Goldsworthy for courses No. 1 and No. 33 of the Reynolds Survey. These lines bear respectively N. 86° 1/4 W. and N. 20° E. and as marked on the ground form the basis of the agreement entered into by all parties interested and referred to by the Hon. Commissioner of the General Land Office in his decision of Feb. 28, 1878.

From this stake the summit of the "Pachappa" bears N. 31° ½ W. 4.43 chs. I mark the stake "J 1" and run thence 1 N. 86° 1/4 W. along the line of agreement as shown on Exhibit "B." Va 14° 6′ E.

0.94 chains—Rocky spur sloping south.

18.50 chains—West foot of "Pachappa" N. and S.

20.30 chains—Road S. and N. 25° E.

24.75 chains—Upper ditch of the Riverside Company 20 lks. wide, runs south.

Line runs along a row of cottonwoods and willows.

36.30 chains—A ditch 6 lks. S. leave willows and cottonwoods.

Enter a young orange orchard.

41.80 chains—A ditch 6 lks. S 50° W.

43.50 chains—Abbott's house 60 lks. S.

55.00 chains—Porch of Mrs. Emory's house.

58.00 chains—A house 24 lks. S.

73.00 chains—A house 118 lks. S.

76.20 chains—Lower ditch 25 lks. wide runs S. (comes from N. 28° E.)

94.20 chains—A road from the E. runs along line.

96.50 chains—A road runs S.

121.52 chains—To stake "J. 2" the point of beginning of the survey of the tract confirmed to Louis Roubidoux.

The exact point of beginning of the Reynolds Survey on the "Pachappa" being involved in considerable uncertainty I determine this point, which fixes the location of the "Roubidoux Tract" as follows: From stake "J 5" the N. E. corner of the tract as finally surveyed by Wm. P. Reynolds 10.36 chs. W. of the 1/4 sec. cor. between secs. 1 and 12 T. 2 S. R. 5 W. S. 24° W. along the line of Reynolds Survey. Va. 14° E.

229.00 chs. to "J. 4." Thence S. 77 1/4 W. va. 14° E. 83.80 chs. to "J. 3." Thence S. 24° 1/2 W. Va. 14° E. 99.57 chs. to "J. 2" a stake in an earth mound.

Note.—These monuments have all been obliterated but "J. 5" is readily established by running from the corner of the Public Survey. March 23, 1878.

Continuing on the south boundary of the Jurupa, to wit, N. 86° 1/4 W. and counting distance from "J. 1."

157.00 chains—Road turns S. W.

185.00 chains—A road runs S. 75° W.

217.25 chains—A dry gully, course N.

254.72 chains—A road S. 75° W.

256.98 chains—Intersect bdy. of Ro 'La Sierra Sepulveda 79.00 chs. N. St. L. S. V. S. 5.

274.00 chains—A road S. 80° W.

298.00 chains—A low hill course N. and S.

303.40 chains—A road N. W.

320.50 chains—A gulch course S. W.

323.50 chains—A gulch course N.

338.74 chains—Intersect the line between ranges 5 and 6 W. 99.54 chs. north of cor. to townships 2 and 3 S. and set a redwood post 40x3x3 in 12 in. deep in mound, 24 in. high with pits 24x24x12 in.

Note.—The cor. to secs. 25, 30, 31 and 36 has been destroyed and at a point 80.00 chs. N. of the cor. to tps. 2 and 3 S. and 19.54 chs. S. of intersection of grant lines I set a post 48x4x4 in 12 in deep in mound 24 in high with pits 24x24x12 in.

343.10 chains—Intersect the line of the Reynolds Survey 11.83 chs. S. 57° W. of station "J. 10" and set a post 40x7x3 in 12 in deep in mound 24 in. high with pits 24x24x15 in. Mark post "J. X." from which a cotton-

wood 30 in. diameter bears S. 84 3/4 W. 829 lks. dis. Thence I run 2 S. 57° W. along the line of the Reynolds Survey.

Va. 14° E. 12.30 chains—A ravine course N. W. 48.00—To "J. 11." Mar. 25, 1878.

Thence 3 N. 74° W. Va. 14° E.

70.00 chains—To "J. 12."

Thence 4 S. 76 1/2 W. Va. 14° E.

66.00 chains—To J. 13.

Thence 5 N. 67° W. Va. 14° E.

33.00 chains—To J. 14.

Thence 6 S. 87° 1/2 W. Va. 14° E.

94.00 chains—To "J. 15."

Thence 7 S. 55 W.

76.00 chains—To "J. 16."

The high bank of the river along which the line runs is here broken by numerous ravines and gulches, running N. to the river which is N. from line from 10 to 20 chs.

Thence 8 S. 28° W. Va. 14° E.

18.00 chains—To "J. 17."

Thence 9 S. 71° 1/2 W. Va. 14° E.

79.20 chains—Intersect line between Tps. 2 and 3 S. 34.00 chs. east of Cor. to Tps. 2 and 3 S. Ranges 6 and 7 West. Set a stake in old mound.

92.00 chains—To "J. 18."

Thence 10 S. 89° W.

22.40 chains—Intersect line between ranges 6 and 7 W. 4.54 chs. south of Cor. to Tps. 2 and 3 south at stake set by Reynolds.

33.00 chains—To "J. 19."

Thence 11 S. 47 1/4 W. Va. 14° E.

Across numerous gulches and ravines running N. to the river L. S. 3.

185.00 chains—To "J. 20" being also on the boundary of Ro. La Serra confirmed to Yorba.

Thence 12 N. 54° W. Va. 14° E.

28.50 chains—To "J 21" and L. S. 2 in S. edge of river bottom bearing S. W.

Thence 13 S. 56° 1/4 W. Va. 14° E.

Following down and crossing the River Santa Ana.

82.67 chains—To "J. 22," L. S. 40" and "E. R. VII."

This post stands in a mound in Willow bottom north of river.

Mar. 26, 1878.

The Commissioner of the General Land Office having directed May 13, 1876, that "the proper boundary on the west will be established by running a line north from a point on the Santa Ana River between the Aguages de Gasper so that it shall terminate at the first white sand bank there is on said course towards Cucamongo" I go to the said Aguages de Gaspar," and from thence directly toward Cucamongo to "the first white sand bank there is in said course." I then mark out a line running from the white sand hill passing between the "Aguages de Gaspar" to a point in the bottom land on the W. side of the Santa Ana River. Thence from the post "J. 22," "L. S. 40" and "E. R. VII." I run as follows down the river and along the line between the Ranchos El Rincon and La Sierra. Va. 14° E.

14 S. 71° W., 4.75 chains.

15 N. 83° 1/2 W., 28.00 chains.

16 S. 79° 1/2 W., 21.00 chains.

17 S. 64° 1/2 W., 15.00 chains.

18 S. 32° W., 19.00 chains.

19 S. 7° 1/2 W., 11.00 chains.

20 S. 14° 1/2 E., 5.00 chains.

21 S. 21° 1/2 W., 4.00 chains.

22 S. 30° 1/2 W., 5.00 chains.

23 S. 74° 1/2 W., 20.00 chains—To a point on west side of the Santa Ana River E. R. 20 and "J. XXIII."

Thence 24 West. Va. 14° E.

6.50 chains—To a point in the line running towards Cucamonga and passing between the Springs of Gaspar. Set a post 48x3x3 in Marked J XXIV 12 in. deep with mound 24 in. high and pits on Grant line 24x24x12 in. The line from the white sand bank and between the Springs of Gaspar continued south runs paralled with the general course of the river and will not be as near it as at this point for about a mile and a half. I therefore adopt this point as being within the meaning of the decree of confirmation and of the decision of the Hon. Commissioner "on the river."

Thence 25 N. 10° 1/4 E. Va. 14° E. Across bottom land on river.

39.15 chains—A ditch 6 lks. wide course S. 60° W. Leave Willows.

40.30 chains—Spring Creek 25 lks. wide runs S. W.

57.00 chains.—Leave bottom land E. and S. 60° W. Ascend hill.

80.00 chains—Summit of hill.

104.36 chains—A fence E. and W.

119.20 chains—A fence E. and W. enter wheatfield.

128.00 chains—Road E. and W.

144.76 chains—A fence E. and W.

196.40 chains—Intersect line of El Rincon Rancho and set post 48x4x4 in marked J. 12 in deep made mound 24 in. high with pits 20x20x12 in.

Mar. 27, 1878.

To determine the amount of conflict with the Rancho El Rincon I go to the post "J. 22," "L. S. 40" and "E. R. VII" and run thence north va 14° E.

42.40 chains—To post "E. R. VIII" "J. 23" of Reynolds Survey of Jurupa.

Thence west. Va. 14° E.

20.00 chains—To post "E. R. IX," J. 24.

Thence north. Va. 14° E.

3.10 chains—Road N. E.

30.00 chains—Ravine course S. E. 96.40 to E. R. X. and "J. 25" of Reynolds Survey of the Jurupa.

Thence west. Va. 14° E.

11.00 chains—Maythew's Mill dam is 25 lks. N.

13.00 chains—Cross dam and enter pond.—Mayhew's mill bears S. 56° W. Mayhew's house bears S. 78° W.

18.00 chains—West side of pond N. and S.

31.80 chains—Fence N. and S. enter wheatfield. Mayhew's mill bears S. 60° E. Mayhew's house bears S. 25° W.

47.75 chains—To post at intersection of north boundary of Ro. El Rincon by west boundary of Ro. Jurupa.

Then continuing the west boundary of the Jurupa N. 10° 3/4 E. and counting distance from "J. XXIV."

205.60 chains—Fence E. and W. Leave wheatfield.

219.50 chains—Intersect the line bewteen Tps. 2 and 3 N. R. 7 W. 16.35 chs. east of cor. to secs. 4, 5, 32 and 33 set a post 50x3x3 in. 12. deep made mound 24 in. high pits on grant line 24x24x12 in. for cor. to fractional secs. 4 and 33.

271.00 chains—The "Aguages de Gaspar."

The smaller bears S. 70° E. 170 lks.

The larger bears N. 55° W. 200 lks.

The smaller is about 1 ch. in diameter.

The larger is about 2.50 chs. from S. E. to N. W. by 1 ch. wide.

272.12 chains—A road N. and S.

277.20 chains—A house east 30 lks.

Clines' house bears N. 55° W.

280.60 chains—A road E. and W.

290.93 chains—Intersect the south boundary of the Rancho Santa Ana del Chino and set a cedar post 48x3x3 in. 12 in. deep made mound 24 in. high pits 20x20x12 in. Clines' house bears S. 35° W.

318.54 chains—A road E. and W.

357.25 chains—A road N. W. and S. E.

373.00 chains—To the southwest point of a white sand hill and set a post 48x4x3 in. 12 in. deep in a mound 24 in. high with pits on the Rancho line 24x24x15 in. marked post "J. XXV" northwest corner of Jurupa Rancho.

To the north co. west of this point there are no white sand banks within one or two miles. There are others to the east and southeast but a line from the Springs of Gaspar to any of them vary materially from a north and south line and would pass to the east of Cucamongo. This line as established runs from the river directly toward Cucamonga and falls between the true and the Magnetic Meridian.

To connect this point with the N. E. corner of the Rancho as established by Reynolds will require a course of about N. 69° 1/2 E.

Mar. 28, 1878.

From the post st. I of Ro. San Bernardino and J. 32 of the Reynolds Survey on the hill Serrito Solo. or Tacamalcay.

S. 69° 1/2 W. on random line. Va. 14° E.

1370.00 chs. to a point 9.73 chs. S. 21° E. of the post "J. XXV" in white sand bank.

Mar. 30, 1878.

Thence 26 N. 69°—56′ E., va. 14° E.

38.60 chains—Intersect boundary of Ro. Santa Ana del Chino and of the Ro. Addition to Santa Ana del Chino and set a stake in a mound of earth with pits on the line of the Jurupa 20.15 chs. N. 61′ 55′ W. from station "S. A. C. J." and "A. S. A. C." and J. 30.

57.60 chains—Intersect the east boundary of the rancho addition Santa Ana del Chino and set a charred post 36x3x3 in. 10 in. deep in mound 24 in. high with pits 20x20x12 in.

Thence from the post set at the intersection of the south boundary of the Rancho Santa Ana del Chino I run N. 82° E. along line of Santa Ana del Chino. Va. 14° E.

58.50 chains—To Station "S. A. C. 3" and J. 28 on Reynolds' Survey of the Jurupa. Set a post 36x3x3 in. 16 in. deep in mound 20 in. high with pits 20x20x12 in.

Thence N. 14 1/2° W. Va. 14° E.

62.00 chains enter sand banks N. E. and S. W. 69.00 to a mound of small stones and set a post 48x3x3 made a mound of earth 24 in. high with pits 20x20x12 in Station "S. A. C. 4" and "J. 29" of the Reynolds' Survey of the Jurupa.

Thence N. 69° E., va. 14° E.

30.00 chains—To a low sandhill where I find an old stake station "S. A. C. 5" "J. 30" and A. S. A. C. of the Rancho Addition Santa Ana del Chino.

Thence north, va. 14° E.

5.15 chains—To a post in mound on line between secs. 22 and 27.

16.15 chains—To post set at intersection of east boundary of rancho addition Santa Ana del Chino. Then continuing the north boundary of the Jurupa N. 69° 56′ E. and counting distance from "J. XXV."

89.15 chains—Road N. and S.

91.40 chains—Enter plowed land N. 15° E.

98.65 chains—Leave plowed land N. 15° E., enter wheat. De Forrest's house bears N. 25 1/2° E.

111.85 chains—Leave wheatfield N. 15° E. De Forrest's house bears N. 51° W.

122.65 chains—Road N. 75° W.

123.60 chains—Intersection line between secs. 22 and 23, T. 2 S., R. 7 W., 6.54 chs. south of 1/4 sec. cor. set a charred post 30x3x3 in. 10 in. deep made mound 24 in. high pits 18x18x12 in., for cor. to fractional secs. 22 and 23.

197.50—Leave smooth plain N. E. and S. W. for rolling chaparral land.

208.84 chains—To a point 16.84 chs. south of cor. to secs. 13, 14, 23, and 24, set a post 36x3x3 in. 10 in. deep made mound 24 in. high pits 20x20x12 in. for cor. to fractional secs. 23 and 24.

253.95 chains—Road N. E. and S. W.

257.60 chains—Intersect line between secs. 13 and 24, 45.36 chs. east of the cor. to secs. 13, 14, 23 and 24, and set a post 36x3x3 in., 10 in. deep, made mound 24 in. high, pits 20x20x12 in. for cor. to fractional secs. 13 and 24.

292.64 chains—Intersect line between ranges 6 and 7 W., T. 2 S., 107.10 chs. S. of the 1/4 sec. cor. between secs. 7 and 12, set charred post 40x3x3 in. made mound 24 in. high with pits 30x30x12 in. for cor. to fractional secs. 13 and 18.

April 1, 1878.

400.65 chains—A road N. and S. leave chapparal.

472.00 chains—A cabin and sheep camp 280 chs. N.

625.30 chains—A road N. W. and S. E.

660.00 chains—Base of Jurupa mountains N. W. and S. E.

712.00 chains—Spur sloping S.

790.00 chains—Mountain spur sloping S. W.

804.20 chains—Intersect line between ranges 5 and 6 W., 53.60 chs. S. of cor. to tps., 1 and 2 S., and set stone 17x10x6 in., cor. to fractional secs. 1 and 6.

828.00 chains—A mountain spur sloping S. W.

857.00 chains—Ridge sloping south from mountain highest peak of Jurupa Mountains brs. N. 20° W.

931.00 chains—A ravine course S. A sheep camp south 6 chs.

971.00 chains—To the base of mountain N. 40° E. and S., 40 W.

972.60 chains—Telegraph from San Bernardino to Anaheim N. 40° E.

987.70 chains—Road from San Bernardino to Anaheim N. E. The east end of Jurupa Mountain bears N. The W. end of Little Jurupa Mountain bears S.

1015.00 chains—Ascend rocky mountain bearing N. and S. W.

1028.00 chains—Summit of mountain sloping N. This ridge extends N. about 15 chs. and S. E. about one mile, then turns S. W., main peak of Jurupa bears S. 82 1/2° W.

1064.00 chains—To base of mountain bearing N. W. and S. E., enter rolling plains.

1068.50 chains—Road N. W. and S. E. enter chaparral Apr. 2.

1103.00 chains—Leave chaparral N. and S.

1147.00 chains—Enter chaparral N. and S.

1185.00 chains—Leave chaparral N. W. and S. E., a road.

1198.00 chains—Enter chaparral N. and S.

1230.20 chains—A road N. W.

1255.40 chains—A road N. W.

1266.50 chains—A fence N. and S.

1312.70 chains—A road S. 30° E.

1313.40 chains—Intersect the line between ranges 4 and 5 W., 32 lks. S. of the 1/4 sec. cor. between secs. 25 and 30, T. 1 S., set a post 50x4x4 in., made mound 24 in. high, pits 24x24x12 in. for cor. to fractional secs. 25 and 30.

1317.70 chains—Road N. and S. Leave chaparral.

1332.20 chains—A fence N. and S., enter field.

1343.25 chains—A fence N. and S.

1356.30 chains—A road E. and W.

1370.00 chains—To the post in stone mound on the hill called Tacamalcay S. B. 1, which I mark J. XXVI.

Thence 27 S. 20° E. Va. 14° E.

5.10 chains—Fence E. and W.

17.00 chains—A house on line.

24.80 chains—Road from Colton to Riverside S. W. 50 lks. S., it turns S. 20° E.

64.85 chains—A fence N. E.

68.10 chains—Enter washed bed of Santa Ana River S. W.

72.50 chains—River course S. W.

76.20 chains—Leave river S. W., road turns S.

102.00 chains—Leave washed bottom S. W.

108.00 chains—To base of steep bank station on survey of Rancho San Bernardino.

118.80 chains—Intersect line agreed on as east boundary of the Rancho Jurupa and set a post 48x6x2 in., 12 in. deep, made mound 24 in. high, pits 24x24x12 in. "J. XXVII."

Thence 28° S. 29° W. Va. 14° E.

27.00 chains—Intersect the line between Tps. 1 and 2 S., R. 4 W., 2.37 chs. E. of cor. to secs. 5, 6, 31 and 32 at a post in mound of earth.

April 3, 1878.

From this cor. to secs. 5, 6, 31, and 32, West, va. 14° E.

79.06 chains—To cor. to Tps. 1 and 2 S., R. 4 and 5 W.

Thence north, va. 14° E.

116.70 chs. to the 1/4 sec. cor. between secs. 25 and 30; thence continuing S. 29° W., counting distance from "J. XXVII."

32.56 chains—Intersect the line between secs. 5 and 6 at a post 4.86 chs. S. of cor. to secs. 5 and 6, 31 and 32.

79.20 chains—Road from Colton to Riverside N. and S.

95.25 chains—A ravine course W.

115.00 chains—East slope of low rocky hill.

117.60 chains—Intersect line between secs. 6 and 7 at post in mound 1.89 chs. W., of 1/4, sec. cor.

166.00 chains—A bend in the upper ditch S. W. from N. W.

193.00 chains—Upper ditch 25 lks. wide runs S. 15° E.

194.97 chains—Intersect the line between ranges 4 and 5 W., at a post in an earth mound 13.20 chs. N. of cor. to secs. 7, 12, 13 and 18.

206.00 chains—Ravine, course W.

290.00—Russell's house bears N. 61° W. 80 lks.

291.00 chains—A road N. 61° W.

320.05 chains—Upper ditch 25 lks. wide, runs S. 85° W.

343.40 chains—Road to Colton N. 50° E.

344.00 chains—Ditch comes from N. and runs on right of line. This is the S. E. boundary of the town of Riverside.

374.30 chains—A road S. 61° E.

387.30 chains—Ditch turns S.

392.00 chains—Ravine, course W.

393.17 chains—Upper ditch N. 70° W., road from N. S. 29° W.

448.00 chains—Road turns W.

450.50 chains—Hall's house 60 lks. S. Descend.

455.00 chains—Cañada del Tesquisquite N. 80° W.

462.00 chains—Top of S. bank of Cañada. Flume from N. 13° E. and ditch runs N. 85° W.

481.50 chains—East base of "Pachappa."

491.75 chains—Rocky spur running S. E.

493.00 chains—To post "J. 1," place of beginning.

April 4, 1878.

Containing 36,132 40/100 acres.

We do hereby certify, that we assisted Wm. Minto, U. S. Deputy Surveyor, in surveying the boundary lines of the Rancho Jurupa situated in the county of San Bernardino, in the State of California, and finally confirmed to Abel Stearns, and that said rancho has been in all respects, to the best of our knowledge and belief, well and faithfully surveyed, and the boundary monu-

ments established according to the laws of the United States, and the instructions of the Surveyor General.

_____,
Compassman,
A. W. LAWRENCE,
Chainman.
THOMAS WHITE,
Chainman.
CHARLES DAVIES,
Axman.
_____,
Flagman.

Subscribed and sworn to before me, this 5th day of April, 1878.

[Notarial Seal] J. L. WARNER,
Notary Public, Los Angeles County, State of California.

I, Wm. Minto, U. S. Deputy Surveyor, do solemnly swear that, in pursuance of instructions from J. W. Ames, U. S. Surveyor General for the State of California, bearing date the 13th day of March, 1878, and in strict conformity to the laws of the United States and the said instructions from the Surveyor General I have well and faithfully surveyed the boundary lines of the Rancho Jurupa, situated in the county of San Bernardino, in the State of California, and finally confirmed to Abel Stearns, and I do further solemnly swear that the foregoing are the true and original field-notes of said survey.

WM. MINTO,
U. S. Deputy Surveyor.

Subscribed by said Wm. Minto, U. S. Deputy Surveyor, and sworn to before me, a Justice of the Peace in and for the County of ————, in the State of California, this 13th day of April, 1878.

R. EGAN,

Justice of the Peace in and for Los Angeles County.

[Endorsed]: (268). Jurupa—Stearns. Field-Notes Minto's Survey in March and April, 1878.

Los Angeles, Nov. 13, 1878.

Hon. Theodore Wagner, U. S. Surv. General, San Francisco.

Sir: I herewith return notes of survey of Rancho Jurupa under your instructions of Sepr. 23.

I include the line from the point indicated by Don Ramon Yorben as the S. W. cor. of the Jurupa, north through the springs at the head of Spring Creek. It terminates in the north boundary at a "white sand hill."

Very respectfully,

Yours etc.,

WM. MINTO.

[Endorsed]: 268. Wm. Minto. Nov. 13, 1878. With notes of resurvey, Jurupa Rancho.

D. L. H.

T. M. J. M. A.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.

Washington, D. C., Sept. 9, 1878.

Theodore Wagner, Esq., U. S. Surveyor General, San Francisco, Cal.

Sir: In the matter of the recent survey of the Rancho "Jurupa," Stearns, confirmee, executed by William Minto, U. S. Deputy Surveyor and approved by you July 19, 1878, I enclose herewith a copy of a communication dated 5th instant, from the Honorable Secretary of the Interior to this office, and in accordance with the instructions contained therein, you are hereby directed to cause a new survey of to be made of the western boundary of said rancho, that will conform to the decisions in the case as follows: By extending that portion of the old line represented on the plat of the Reynolds' survey as course number 26, due north to or within the immediate vicinity of the location of the "First White Sand Bank," as determined by said survey and designated on the official plat thereof, and south to the Santa Ana River. This line cannot extend further north than the said "First White Sand Bank," and with reference to the said Reynolds' Survey will be a due north and south line passing between the Gaspar Springs.

You will also connect the northern terminal point of the said western boundary by a straight line with the Tacamalcay Mountain.

I enclose herewith a diagram indicating the proposed changes, in the survey made by Minto, before referred to, and you are requested to give the matter prompt attention.

Respectfully,

U. J. BAXTER,
Acting Commissioner.

[Endorsed]: Jurupa (Stearns). Commr. Genl. Land Ofc. (D). Sept. 9, '78. Incloses copy of communication from Secty. Interior, dated Sepr. 5, '78, and in accordance therewith orders a new survey of west bdy. to conform to the decisions in the case, dated Feb. 21, '77, and Feb. 28, '77.

State of California,
County of San Bernardino. } ss.

Raymundo Yorba, being duly sworn according to the law, deposes and says that he is a citizen of the United State of America, and resides in the county and State aforesaid. That he has resided in the vicinity of the Rancho Jurupa for forty-five years and is well acquainted with the original boundary lines of said Rancho as they were accepted during the Mexican regimen, and that he is well acquainted with the western boundary line of the Jurupa Rancho and that he was with the Deputy U. S. Surveyor when he ran or re-established said line and that he ran the said western boundary line of the Rancho Jurupa in strict accordance with the old line as understood and known by him to have been the western boundary of the Jurupa Rancho during the Mexican regime. Furthermore that Sr. Juan Bandino, owner of the Rancho Jurupa never claimed for the western boundary of the Jurupa Rancho below the sycamore

tree which stood there, and stands now, near the bank of the Santa —— River a little above the house now occupied by John Gregory, and that the line run by Hadley in the year A. D. 1858 is the correct and proper western boundary line of the Rancho Jurupa and that the line A. B. marked on the within plat is the original western boundary line of said Rancho to the best of his knowledge and belief.

RAYMUNDO YORBA.

Sworn to and subscribed before me on this 7th day of April, A. D., 1870.

[Notarial Seal.] WM. R. WOZENCRAFT,
Notary Public.

[Endorsed]: 641. Rancho Jurupa. Affidavit of Raymundo Yorba. Filed in office 20th Apr. '70. J. K. G.

FIELD-NOTES OF SURVEY.

of

RANCHO "JURUPA."

Finally confirmed to Abel Stearns situated in the county of San Bernardino, State of California, by Wm. P. Reynolds, Deputy Surveyor, under instructions from Sherman Day, U. S. Surveyor General, dated Janlary 14, 1869.

Survey commenced June 29, 1869.

Survey completed July 12, 1869.

I, Ebenezer Hadley, having been appointed compassman in the employment of Wm. P. Reynolds, U. S. Deputy Surveyor, do solemnly swear that I will well and faithfully execute the duties confided to me, to the best of my skill and ability.

EBENEZER HADLEY,
Compassman.

Subscribed and sworn to before me this 29th day of June, 1869.

WM. P. REYNOLDS,
U. S. Deputy Surveyor.

We, Thomas F. Norris and S. H. Butterfield do solemnly swear that we will well and faithfully execute the duties of chain carriers; that we will level the chain upon uneven ground and plumb the tally pins, whether by sticking or dropping the same and that we will report the true distance to all notable objects, and the true lengths of all lines we may assist in measuring to the best of our skill and ability.

THOS. T. NORRIS,
Chainman.

S. H. BUTTERFIELD,
Chainman.

Subscribed and sworn to before me this 29th day of June, 1869.

WM. P. REYNOLDS,
U. S. Deputy Surveyor.

I, James Parker, do solemnly swear that I will well and faithfully execute the duties of axman, according to the instructions given me, to the best of my skill and ability.

JAMES PARKER,
Axman.

Subscribed and sworn to before me this 29th day of June, 1869.

WM. P. REYNOLDS,
U. S. Deputy Surveyor.

I, Felipe Ribera, do solemnly swear that I will well and faithfully execute the duties of flagman according to the instructions given me, to the best of my skill and ability.

FELIPE RIBERA,
Flagman.

Subscribed and sworn to before me this 29th day of June, 1869.

WM. P. REYNOLDS,
U. S. Deputy Surveyor.

Field-notes of Survey of Rancho "Jurupa" finally confirmed to Abel Stearns, situate in the County of San Bernardino, State of California, under instructions from Sherman Day, U. S. Surveyor General for California, dated January 14, 1869, by Wm. P. Reynolds, Deputy Surveyor.

Survey commenced June 29th, 1869.

In accordance with my instructions from the Surveyor General's office, I begin at an old stone found at the N.

west foot of a small hill standing alone on the plain near the head of a cañada called "Tesquesquite" said hill being a notable object and was pointed out to me by Louis Roubidoux, Jr., (who has resided for nearly 25 years on this Rancho) as the hill called by the Indians "Pachappa" mentioned in my instructions as the point of beginning.

A high detached hill bears N. 24 3/4° W., thence according to the true meridian the variation of the magnetic needle being 14° 32' E. N. 84 1/2° W. 120.00 over a nearly level plain and at.

62.00 chains—Cross upper road from San Bernardino to the tin mines on Rancho El Sobrante San Jacinto, Course S. 18° W.

118.00 chains—Cross lower road from San Bernardino to the aforesaid Tin mines course S. W. nearly.

120.00 chains—Set a post and drove a charred stake in mound of earth with pits on line, marked said Post J. 2 Station which I also establish as the S. E. corner of a tract of land finally confirmed to Louis Roubidoux being the same tract of land mentioned in my instructions directing me to except in my survey from this confirmation to the appellee (Abel Stearns) "such portion of the land described therein as may formerly have been conveyed by Juan Bandini the original grantee thereof to Benjamin D. Wilson" and in accordance with said instructions I run as follows: N. 24 1/2° E. 99.37 along the line confirmed to said Louis Roubidoux and at 15.00 chains—To edge of high bank of table-land 80 feet deep on the south and left side of River Santa Ana course of bank N. 85° W. and N. 25° E.

16.70 chains—To foot of bank and enter river bottom at the edge of an old Sanjon called aqueduct in the decree of confirmation to said Louis Roubidoux. The said Sanjou or aqueduct which is the one mentioned in the aforesaid decree of confirmation to Louis Roubidoux is now filled up by the overflow of the river Santa Ana in the year 1862, at which time a branch of the said river left the main body (up stream) at a point about 2 1/2 miles hence bearing N. 25 1/4° E. It then runs in a direction about S. 35° W. to a point bearing N. 60° W about 55. chs. dist where it turns and runs on a course N. 80° W. a distance of about 60. chs. and unites again with the main body of the river.

The course of the Sanjou called aqueduct in the aforesaid decree of confirmation to said Louis Roubidoux is plainly visible and I continue on this line following the general course of said Sanjou or aqueduct along the foot of the steep bank of table-land and river bottom, through dense growth of low willows and scattering cottonwoods and sycamores, in low swamp bottom and at 99.37 chains—To center of mouth of "Cañada del Tequesquite," a boundary point called for in the said decree of confirmation to said Louis Roubidoux at the junction of the said Sanjoú or aqueduct with the said Cañada del Tequesquite.

Drove a charred stake and set a post in mound marked J 3 Station from which a cottonwood tree 22 in diam. bears N. 67 1/2 W. 327 links dist. A sycamore 18 in. diam. bears S. 8° W. 463 links distant.

Thence N. 77 1/4° E. 80.83. Following up the general

course of the Cañada del Tequesquite a boundary line mentioned in the decree of confirmation to said Louis Roubidoux.

83.80 chains—Set a post and drove a charred stake marked J. 4 Station in a bend of the Cañada.

The general course of the Cañada from the foothills near "Pachappa" hill (the point of beginning of this survey) to this point is N. 22° W. The average width of the Cañada on this line is about 10. to 13 chains; thence N. 24° E. along the line confirmed to Louis Rubidoux.

8.10 chains—Foot of bank of Cañada course N. 70° W. and S. 50° E.

8.50 chains—Top of bank and enter plain.

101.00 chains—Edge of bank of plain and river bottom course S. 38° W.

June 29th, 1869.

101.35 chains—Foot of bank and enter bottom land of river with scattering growth of willows.

229.00 chains—To a point on line between section 1, and 12 10.36 west of 1/4 sec. corner township 2 south, range 5 west of the San Bernardino meridian and at intersection of the south boundary.

"Of the lands conditionally granted to the New Mexicans" as mentioned in the decree of confirmation to said Louis Roubidoux, and also intersect the south boundary of the claim of one Mejillo, one of the said New Mexicans in said decree mentioned who pointed out to me the south line his claim, which corresponded with his deed, a copy of which I made from the original deed or record in Book A of the Records of Los Angeles County.

Drove a charred stake and set a post in mound marked J. 5 Station being the N. E. corner of the tract finally confirmed to Louis Rubidoux. From which post a live willow tree 20 in diam. bears N. 44 3/4° W. 155. links dist. Another willow 13 in diam. bears N. 62 1/4° W. 182 links dist.

Thence west 270.00 along the northern line of confirmation to Louis Roubidoux through river bottom.

5.50 chains—Enter dense growth of low willows.

41.00 chains—Leave dense growth of low willows.

45.50 chains—To the edge of east and left bank of River Santa Ana Course S. 5° W. the general course of the river is about S. 35° W.

58.70 chains—To edge of west and right bank of river and enter bottom with thick growth of willows, elders and scattering sycamores.

73.45 chains—Foot of steep bank of river bottom—course S. 28° W.

74.66 chains—Top of bank and enter table-land—sloping east.

100.00 chains—Cross road from Roubidoux to Agua Mansa a New Mexican settlement in the part of the Rancho "Jurupa"—course N. 50° E.

155.60 chains—Cross road from Roubidoux to the town of San Bernardino—course N. 30° E.

191.00 chains—To base of steep rocky mountain—course N. and S.

233.60 chains—To summit of same and descend.

248.00 chains—To opposite base of mountain and enter valley of Portazuelo del Chimisal.

270.00 chains—To corner to sections 4, 5, 8 and 9 township 2 south range 5 west.

The said Portazuelo del Chimisal being a point of direction in the decree of confirmation to Louis Roubidoux.

Drove a charred stake and set a post in a mound of stone marked J. 6 station, being the N. W. corner of the tract confirmed to Louis Roubidoux. The Portazuelo del Chimisal bears N. 10° E. about 120 chains distant.

Thence S. 16° W. 211.00 along the line confirmed to Louis Roubidoux down the valley of Portazuelo del Chimisal.

80.00 chains—Leave valley and enter table-land sloping east.

90.50 chains—Cross road from Cucamonga to Rubidoux—course N. 75° E.

The house of Louis Roubidoux bears S. 69° E.

June 30th, 1869.

166.00 chains—House of Roubidoux bears N. 65 1/2° E.

206.80 chains—To base of small conical hill mentioned in the deed from Juan Bandini to Benjamin D. Wilson.

211.00 chains—To summit of hill and set a charred stake and post marked J. 7 station.

Thence S. 16 1/2° west 74.00 along the line confirmed to Louis Roubidoux.

5.50 chains—To opposite base of hill.

21.50 chains—Cross road from Roubidoux to Rancho El Rincon course N. E. and S. 65° W.

69.40 chains—Drove a charred stake and set a post in mound for witness post marked J. 8 witness station. From which a black willow 20 in diam. bears N. 71° E. 660 links distant.

70.80 chains—To the edge of the north and right bank of River Santa Ana 20 feet deep.

71.10 chains—To foot of bank and enter river—course N. 88° W.

74.00 chains—To a point in the river Santa Ana where the Sanjou or acqueduct as mentioned in the decree of confirmation to Louis Roubidoux, before the overflow of 1862 united with the river.

The said Sanjou or aqueduct mentioned in said decree of confirmation to said Roubidoux is now the bed of the river and formerly made the junction at this point. This being the point mentioned in said decree of confirmation to said Roubidoux as the point of commencement and S. W. corner of his tract which I established as Station 8 of the Rancho "Jurupa."

Thence S. 71 1/4° E. 141.10 along the northern line confirmed to said Louis Roubidoux following the course of the old Sanjou or aqueduct.

13.00 chains—To a point opposite the center of the main stream of the River Santa Ana about 5 chains dist. bearing N. 58° E. course of stream from above to the mouth of main stream S. 58° W.

50.72 chains—To south and left bank of river—course N. 80° W. and enter bottom land.

75.00 chains—Leave Sanjou or aqueduct at foot of

steep bank of table-land 50 feet high, course N. 78° W. and S. 78° E.

77.12 chains—Top of bank and enter table-land.

86.00 chains—At this point I am opposite the general course of east branch of river from where it leaves the main branch about 2 1/2 miles from this point. Course from thence S. 54° W. to a point N. 32° E. 5 chs. dist. where it turns and runs N. 80° W. to the point of junction with the main stream at the commencement of this course.

141.10 chains—To post and station 2 of Rancho Jurupa and S. E. corner of tract of land finally confirmed to Louis Roubinoux for 1 1/2 leagues, which I also establish as Station 9 of said Rancho "Jurupa."

Thence N. 84 1/2° W. 211.00 chains—Leaving the line of the tract of land confirmed to Louis Roubidoux and running along the high bank of the river at

38.00 chains—Cross a road running down the river—course S. 69° W.

76.00 chains—Top of gradual ascent of table-land. The high detached hill mentioned at the point of beginning as bearing N. 24 3/4° W. now bears N. 52° E.

81.50 chains—Cross a dry gully 60 lks. wide—course N. 5 1/2° E.

106.00 chains—Summit of gradual rise of table-land.

162.00 chains—To summit of low ridge running N. and south nearly.

169.00 chains—Cross a deep dry gully 50 links wide—course N. 50° W.

176 chains—To summit of low hills—course N. and S.

201.00 chains—Cross a deep dry gully 50 links wide —course N. and S.

211.00 chains—To a point on high bank of river bottom.

Drove a charred stake and set a post marked J. 10 Station in a mound of stone, the river on a north course from this point is 15 chs. distant.

July 1st, 1869.

Thence S. 57° W. 60.00 chains—Along high bank of table-land on the south and left side of River Santa Ana and at 6.50 chains—Intersect line between ranges 5 and 6 west, township 2 south of the San Bernardino meridian 22.53 chains north of corner to sections 25, 30, 31 and 36.

Drove a charred stake and set a post in mound marked J. on north face.

60.00 chains—Drove a charred stake and set a post in mound marked J. 11 Station. The river on a north course across bottom 18 chains dist. The river bottom from high bank to high bank at this point is about 40 chs. wide.

Thence N. 74° W. 70.00 chains—Along high bank of river and at 56.00 chains—Cross a dry gulch 145 lks. wide—course N. 15° W.

69.00 chains—Cross a deep gulch gully 30 lks. wide—course N. W.

70.00 chains—Drove a charred stake and set a post in mound marked J. 12 Station.

The river on the north course is 5.50 chs. dist. The river-bottom from bank to bank is about 25 chs. wide.

Thence S. 76 1/2° W. 66.00 chains— Along high bank of river and at

66.00 chains—Drove a charred stake and set a post in mound of earth and stone marked J. 13 Station. The river is 29.00 chs. dist. on a north course. The bottom from bank to bank is about 50 chs. wide.

Thence N. 67° W. 33.00 chains—Along high bank of river and at

33.00 chains—Drove a charred stake and set post in mound of earth and stone, marked J. 14 Station. The river is 25 chs. dist. on a north course. The river bottom from bank to bank is about 50 chs. wide.

Thence S. 87 1/2 W. 94.00 chains—Along high bank of river and at 14.00 chains—A house bears north 150 links dist.

23.00 chains—Across a dry gully 112 links wide—course north.

55.00 chains—A wood house bears north 8 chs. dist. in river bottom.

80.00 chains—To summit of low granite ledge—course N. W. and S. E.

94.00 chains—Drove a charred stake and set post in mound of granite boulders, marked J. 15 Station.

The river on the north course is 19 chs. dist. The river bottom from bank to bank is about 45 chs. wide. The stream is about 15 chs. wide.

Thence S. 55° W. 76.00 chains—Along high bank of river, and at 14.00 chains—Cross a dry ravine 240 lks. wide—course north.

40.00 chains—Cross a dry ravine 200 lks. wide—course N. W.

50.00 chains—Cross a dry ravine 150 lks. wide—course N. W.

68.50 chains—Cross a dry ravine 320 lks. wide—course N. W.

76.00 chains—Drove a charred stake and set post in mound of earth and stone, marked J. 16 Station, from which a house on the north and right bank of river bears N. 5 1/2° E. about 40 chs. dist. Another house bears N. 59° W. about 40 chs. dist. The river on a north course is 20.00 chs. dist. The river on a west course is 28.50 chs. dist. The river bottom from bank to bank is about 75 chs. wide. The stream is about 16 chs. wide.

Thence S. 28° W. 18.00 chains—Along high bank and at 18.00 chains—Drove a charred stake and set post in mound of earth and stone marked J. 17 Station. The river on a N. W. course is 25 chs. dist. The river bottom from bank to bank is about 85 chs. wide. The stream is about 15 chs. wide.

July 2nd, 1869.

Thence S. 71 1/2° W. 92 chains—Along high bank of river bottom, and at

79.17 chains—Intersect line between township 2 and 3 south, range 6 west, 5.98 chs. west of 1/4 section corner, between sections 6 and 31 set a charred stake in mound marked J. on north face.

92.00 chains—Drove a charred stake and set a post in mound of earth marked J. 18, Station. The river on a north course is 20 chs. dist. The river bottom from

bank to bank is about 65 chs. wide. The stream of river is about 20 chs. wide.

Thence S. 89° W. 33.00 chains—Along high bank of river bottom and at 8.56 chains—To edge of steep bank, 60. feet deep and descend.

10.78 chains—To foot of bank and enter river bottom—course S. 65° W.

22.42 chains—Intersect line between ranges 6 and 7 west, township 3 south, 4.54 chs. south of corner to township 2 and 3 south. Drove a charred stake and set a post in mound of earth marked J. on north face.

25.00 chains—Leave river bottom and ascend high bank—course N. 72° W.

27.00 chains—Top of bank.

33.00 chains—To a large mound of granite boulders on the N. W. slope of a small hill. Set a charred stake and post marked J. 19. Station. The river on a N. W. course is 10 chs. dist. The river bottom from bank to bank is about 45 chs. wide. The stream is about 25 chs. wide.

Thence S. 47 1/4° W. 185.00 chains—Along high bank of river bottom and at

22.50 chains—Cross a dry gully 42 links wide—course N. W.

26.00 chains—Cross a dry gully 36 links wide—course N. W.

37.00 chains—Cross a dry gully 55 links wide—course N. W.

70.00 chains—Cross a dry gully 70 links wide—course N. W.

185.00 chains—To a post in mound marked L. S. No. 3, being Station 42 of the final survey of Rancho "La Sierra" finally confirmed to Bernardo Yorba on a high point of bank of table-land and river bottom. The point of table-land mentioned in my instructions as follows: "On which Mr. Bandini had established his house and where the said river makes a bend where a stake was driven for a landmark bears S. 52 1/2° W. 870 chs. dist. Set a charred post marked J. 20. Station.

Thence N. 54° W. 28.50 chains—Retracing the line of the final survey of Rancho "La Sierra" finally confirmed to Bernardo Yorba and at 00.40 chains—Commence descent of steep bank—course N. 65° E. and S. 54° W.

2.20 chains—To foot of a bank and enter river bottom with scattering growth of cottonwood, sycamores and willows.

8.83 chains—A charred cottonwood stump 22 in. diam. 10 feet high.

25.42 chains—Edge of east and left bank of river Santa Ana—course S. 46° W. Set a witness post marked J. 21 Station W. P. from which a cottonwood tree 15 in. diam. marked L. S. 2 B. T. bears S. 42° E. 245 links distant.

28.50 chains—To a point in river Santa Ana which I establish as Station 21 of Rancho Jurupa and a previously established corner and station 41 of Rancho "La Sierra" finally confirmed to Bernardo Yorba. From which station the witness tree above mentioned bears S. 53 1/2° E. 307 lks. dis.

Thence S. 56 1/4° W. 82.67 chains—Along the line of

the said Rancho "La Sierra" finally confirmed to Bernardo Yorba, down the River Santa Ana and at 51.00 chains— To point of bluff bank on west and right bank of river.

51.60 chains—Leave bank of river—course S. 35° W. and enter bottom land, with dense growth of Guatamaten brush and low willows. N. and S.

64.00 chains—Leave dense growth of Guatamaten brush and low willows. E. and N.

82.67 chains—To post marked E. R. V. II Station 36 of the final survey of Rancho El Rincon finally confirmed to Bernardo Yorba, also marked L. S. 40 Station of Rancho "La Sierra" finally confirmed to said Bernardo Yorba, which post marked on N. E. face J. 22 Station Rancho El Rincon was formerly a portion of Rancho "Jurupa" and was sold by the original grantee (J. Bandini) of the last-mentioned rancho to David Alexander; Alexander sold to Isaac or Julian Williams and Williams sold to Bernardo Yorba all of which appears on file in the case Rancho El Rincon at the office of the U. S. Surveyor General for California at San Francisco.

Thence north 42.44 chains—Leaving the line of final survey of Rancho "La Sierra" finally confirmed to Bernardo Yorba and retracing the line of the final survey of Rancho El Rincon also finally confirmed to Bernardo Yorba and at 12.50 chains—Enter thick growth of Guatamotes and willows—course E. and W.

25.00 chains—Leave Guatamotes and willows and bottom land of river, at foot of base of high table-land

and ascend 30.40 chains—Top of table-land.

42.44 chains—To post marked E. R. VIII, Station 37 of final survey of said Rancho "El Rincon" which I establish as Station 23 of Rancho "Jurupa" and marked post J. 23 Station.

July 3d, 1869

Thence west, 20.00 chains—Along line of said Rancho "El Rincon" over rolling table-land and at 20.00 chains —To post in mound marked E. R. IX Station. 38 of said Rancho "El Rincon" and establish the same for station 24 Rancho "Jurupa."

Thence north 96.56 chains—Along the line of said Rancho "El Rincon" over undulating plain and at 3.00 chains—Crossroad running from a house built by Juan Bandini and now owned by Leonardo Cota situate on Rancho "El Rincon" to River Santa Ana—course N. 51° 62° W. about 115 chs. dist.

E. and S. 51° W. The house of Leonardo Cota bears S.

34.00 chains—To bank and descend to moist hollow—course S. 50° W.

36.00 chains—Foot of bank and enter moist bottom of hollow.

38.80 chains—Across hollow to foot of bank.

40.00 chains—Top of bank to table-land.

96.56 chains—To post in mound marked E. R. X. Station 39, of Rancho El Rincon, and establish the same as station 25 of Rancho "Jurupa." From this point I locate the three Cienegas (taken by Henry Hancock in the former survey made by him while a Deputy U. S. Surveyor as the "Azuajes de Guapas" in running township lines), as follows: N. 28° E. and at 45.87 ch. cross

a stream of pure water 20 links wide and 2 feet deep, course N. 85° W., which rises in the three Cienegas above mentioned at 52.35 chs. to a willow tree 11. in. diam. on west side of West Cienega. Thence S. 87° E. across Cienega at 4.80 chs. leave Cienega, at 21.30 chs. across same stream of water 12 links wide and 12 in. deep; course S. 82° W. from this point down stream and S. 33° W. to this point from above at 22 chs. cross a small stream of water 7 links wide and 3 inches deep from eastern Cienega and at 24.20 chs. to a willow 10 in. diam. on the west edge of Eastern Cienega 3 chs. wide. The stream last crossed joins the main stream at 1. chain below the crossing of this line, thence N. 3 1/2° E. at 70 lks., cross last-mentioned stream and at 9.80 chs. to the extreme eastern point of the Northern Cienega, which is about 4 chs. in diameter and nearly circular. A large volume of water is discharged from this Cienega and runs in general course S. 33° W. for about 7 chs., then the general course of the stream is S. 84° W. (receiving also the water from the other two Cienegas) for about 26 chs., when the stream again turns to the southward on a general course S. 30° W. and discharges into the river Santa Ana on Rancho "El Rincon."

Thence west 34.00 chains along the line of said Rancho "El Rincon" over plain sloping gradually to the southward and at 11.25 chains—Cross a stream of water from the three Cienegas above described 25 lks. wide and 4 feet deep, course S. 35° W.

34.00 chains—Set a post and charred stake on north

boundary of said Rrancho "El Rincon" in a mound of earth J. 26, station.

Thence north 89.60 chains, leaving the line of the final survey of said Rancho "El Rincon" finally confirmed to Bernardo Yorba over a moist level plain and at 20.00 chains—Intersected line between township 2 and 3 south, range 7 west, 14.00 chains west of 1/4 section corner between sections 4 and 33. Set a charred post marked J. in mound of earth with pits on line.

65.00 chains—A house bears S. 79° W., about 10 chs. dist.

70.00 chains—The east "Aguaje de Gaspar" or spring of Gaspar as mentioned in my instructions bears S. 78° E., 210 lks. dist. The West Aguaje bears N. 40° W. 2.24 links distant. These Aguajes are about 1 chain across and are nearly circular, with the surrounding land, very hard and but little water comes from them. They are situated at the summit of a gentle rise of ground and are conspicuous for some distance off by the green grass continually around them. These springs or Aguajes were shown to me by Don Ygnacio Portilla, who resided at these Aguajes at the time juridical possession was given of this rancho.

74.00 chains—A house bears east 30 links distant.

82.40 chains—Cross a road from Rancho Santa Ana del Chino to San Bernardino, course N. 70° E.

89.60 chains—Intersect the northern boundary line of final survey of Rancho Santa Ana del Chino finally confirmed to M. M. Williams et al., between Stations 2 and 3 of said rancho. Drove a charred stake and set

a post in mound marked J. 27 station. The first white sand bank mentioned in the decree of confirmation in my instructions, as pointed out to me by the aforesaid Don Ygnacio Portilla, is on the Rancho Santa Ana del Chino and bears N. 150° E. 42.87 chs. dist. I therefore run the line of the Rancho "Jurupa" as follows: N. 82° E. 62.50 chains along the line of official survey of Rancho "Santa Ana Chino" over moist level plain and at 62.50 chains—To a stake in mound marked S. A. C. 3 Station for said Rancho Santa Ana del Chino and established the same as station 28 of Rancho "Jurupa."

Thence N. 14 1/2° W., 69.00 chains along the line of final survey of said Rancho "Santa Ana del Chino" over moist plain and at 8.00 chains—Cross a road from said Rancho Santa Ana del Chino to San Bernardino course N. 80° E. and S. 80° W.

41.00 chains—Cross a road from Rancho San Jose to San Bernardino course N. 70 E. and S. 70° W.

64.00 chains—Leave moist land E. and W. and sandy land.

69.00 chains—To an old stone mound at the foot of a small sand knoll being Station 4, of the final survey of the said Rancho "Santa Ana del Chino" in which mound set a post marked J. 29 station.

Thence N. 69° E. 30.00 chains along the line of official survey of said Rancho "Santa Ana del Chino" at the south edge of sand hills.

30.00 chains—To post in mound of small stones on the summit of a small sand knoll 15 feet high marked

S. A. C. 5, station A. S. A. C. Station to rancho. "Addition to Santa Ana del Chino" in which mound set post marked J. 30 Station.

July 5th, 1869.

Thence N. 63° E. 690.00 chains, leaving the line of the final survey of Rancho "Santa Ana del Chino" and Rancho "Addition to Santa Ana del Chino" finally confirmed to M. M. Williams et al., along the southern edge of low rolling sandhills, and at 98.00 chains—Leave sandhills N. E. and S. W. and enter level plain with thick growth of weeds and scattering sage brush.

146.00 chains—Enter sandy plain N. and S.

172.00 chains—Leave sandy plain N. and S. and enter gravelly plain with scattering chaparral and sage brush.

180.00 chains—Enter fine growth of bunch grass N. and S.

249.18 chains—Intersect line between ranges 6 and 7 west, township 2 south, 28.96 chains north of corner to sections 18, 19, 13 and 24. Drove a charred stake and set a post in mound marked J.

July 6th, 1869.

330.00 chains—Leave bunch-grass N. and S. and enter scattering chaparral.

352.00 chains—Leave chaparral N. and S. and enter thick growth of bunch-grass and sagebrush.

378.00 chains—Leave bunch-grass and sagebrush N. and S. and enter light sandy plain.

515.00 chains—Cross-road from Cucamonga to Roubidoux—course at this point N. W. and S. 60° E.

540.00 chains—To base of rolling hills from Jurupa Mountains N. 80° W. and S. 50 E.

585.00 chains—West end of western peak of Jurupa Mountains bears S. 47 1/2° E. about 25 chs. distant.

592.00 chains—Base of Jurupa Mountains 1 chain S.

598.00 chains—Cross highest summit of spurs N. W. and S. E.

654.00 chains—Leave base of rolling hills N. 70° W. and S. 70° E., the base of the mountain about 7 chs. south. These mountains are a high, rocky detached range, very rugged and broken, running N. 76 1/2 E. about 5 1/2 miles and about 1 1/2 to 2 1/2 wide, and about 4,000 feet high above the level of the surrounding plain.

690.00 chains—To an old stone mound at a point about 7 chs. south of the old road from Mission San Gabriel to San Bernardino, where it passes the point of the foothills on the north of the Jurupa mountains. This mound was pointed out to me on a former occasion while passing on the road by Luis Arenas, the judicial officer, who gave the juridical possession of Rancho "Jurupa" to Juan Bandini as a landmark established at that time. Set a charred post in said stone mound marked J. 31 Station.

July 7, 1869.

Thence N. 76 1/2° E. 645.00 chains over rolling land; the base of the "Jurupa" mountains about 8 chs. south and at 46.00 chains—Intersected line between township 1 and 2 south, range 6 west, 37.77 chains west of corner to township 1 and 2 S., R. 5 and

6 W. Made a stone mound and set a charred post marked J. on south face.

84.76 chains—Intersect line between ranges 5 and 6, township 1 south, 9.40 chs. north of corner to sections 1, 6, 31, 36, made a stone mound and set post marked J. on S. face.

130.00 chains—A sheep camp in the mouth of a cañon about 20 chs. wide, with sycamore timber, bears south about 20 chs. dist., course of cañon N. 16° E.

175.00 chains—Mouth of a cañon about 15 chs. wide, bears south, about 30 chs. dist. Has scattering sycamore timber, course of cañon N. 17 1/2° E.

210.00 chains—To base of spurs of "Jurupa" mountains N. and S. and ascend across the same.

230.00 chains—Cross highest summit of spurs and descend—course of spurs N. 11° W. and S. 11° E.

290.00 chains—Leave foot of spurs and enter rolling land.

294.00 chains—To north edge of road from Rancho "El Rincon" through the "Portazuelo del Chimisal" to Agua Mansa and San Bernardino and continue along the same. The Portazuelo bears S. W. nearly about 25 chs. dist.

301.00 chains—Leave road which from this point runs S. 70° E.

344.00 chains—Cross the same road—course N. E. and S. W. at this point, at about 10 chs. N. E. it joins the road mentioned in my instructions from San Gabriel to San Bernardino. The last mentioned road runs on a course nearly parallel with this line from 5 to 8 chs. dist.

July 8, 1869.

372.00 chains—Enter thick chaparral N. and S.

382.00 chains—Cross a dry wash 3 chains wide—course N. 10° E.

398.00 chains—Leave chaparral N. 15° E. and S. 15° W. and enter rolling table-land.

460.00 chains—Leave table-land N. E. and S. W. and enter scattering chaparral.

461.00 chains—Cross an old road—course N. 30° W. and S. 30° E.

510.00 chains—Chaparral N. and S. and enter open plain.

520.00 chains—Cross road at foot of high bank of table-land—course N. W. and ascend bank.

522.00 chains—Top of bank—course N. 25° W. and S. 25° E.

557.00 chains—Cross road from Roubidoux to San Bernardino—course N. 60° E. and S. 60° W.

581.30 chains—Intersect line between ranges 4 and 5 west, township 1 south, 6.83 chs. north of 1/4 section corner between sections 25 and 30. Made a mound and set post marked J. on S. face.

593.00 chains—Cross the old road mentioned in my instructions as "Going from San Gabriel to San Bernardino"—course S. 72° E. The summit of a high, lone, detached hill bears south about 130 chs. dist.

632.00 chains—Enter thick chaparral N. and S.

639.00 chains—Leave chaparral at foot of a small, lone mountain (mentioned in my instructions as "called by the Indians 'Tacamalcay' and located

on the map furnished me from the Surveyor General's office as 'Serrito Salo' and now known and called by the people in this vicinity by the name of Selives Mountain") and ascend along the southeastern slope of the same.

645.00 chains—To the extreme eastern point of said mountain "Serito Salo" or Tacamalcay, At a stake in stone mound marked S. B. Station No. 1 of the final survey of Rancho San Bernardino, finally confirmed to Jose del Carmel Lugo et al, and point mentioned in my instructions as "a small, lone mountain on the left hand of the high road going from San Gabriel to San Bernardino and called by the Indians 'Tacamalcay' and which was designated as a land mark. Set a charred post in said mound of stone marked J. 32 Station. The Catholic church in the northern part of the settlement of New Mexicans called "Agua Manza," bears S. 33° W. about 80 chs. dist. The town of San Bernardino bears N. 41° E. about 4 1/2 miles distant.

July 9th, 1869.

Thence S. 20° E., 116.50 chains—along the line of final survey of Rancho San Bernardino finally confirmed to Jose del Carmen Lugo et als., which at the time said Rancho San Bernardino was surveyed this line was the agreed line between the owners thereof and the owner of the Rancho "Jurupa," the said line was pointed out to me by Jose Maria Lugo on a former occasion who was one of the owners of the Rancho San Bernardino, and was present when the juridical possession was given thereof which was bounded by the former

juridical possession of the Rancho "Jurupa," at 5.00 chains—To foot of hill.

24.00 chains—Cross road from Agua Mansa to San Bernardino—course N. 40° E. and S. 40° W.

24.40 chains—Cross a live willow fence N. 40° E. and S. 40° W. and enter cornfield extending N. E. and S. W. about 6 chs. long with thick growth of low willows on each side.

25.00 chains—Cross an irrigating ditch 18 lks. wide —course S. 38° W.

30.00 chains—Leave cornfield and enter willows.

45.37 chains—Leave willows and enter sandbed of River Santa Ana—course S. 60° W.

52.00 chains—To stream of Santa Ana S. 75° W.

73.40 chains—To sandbed of Santa Ana and enter willow timber. This river during the rainy season shifts its bed between the high banks from side to side the entire distance through the "Jurupa" Rancho.

90.00 chains—A house 3 chs. east.

108.00 chains—To a post at foot of high bank in river bottom, the previously established Station 2 and S. W. corner of the final survey of said Rancho San Bernardino finally confirmed to Jose del Carmen Lugo et als.

Thence leaving the line of final survey of said Rancho San Bernardino and ascending bank, and at 112.37 chains—Top of bank course S. 72° W. and N. 46° E.

116.50 chains—To an old stone mound, a boundary monument of the juridical possession of the Rancho "Jurupa" as pointed out to me on the former occasion

aforesaid by the said Jose M. Lugo. Set a post in said mound marked J. 33 Station.

July 10th, 1869.

Thence S. 29° W., 502.40 chains—over rolling table-land and at 35.28 chains—Intersected line between township 1 and 2 south, range 4 west, 3.54 chains—east of corner to sections 5, 6, 31 and 32. Set a charred post in mound marked J. on west face of post.

111.00 chains—To base of spur—course S. W. about 45 chs. to plain running out from the N. W. end of the San Jacinto mountains and ascend over same.

116.73 chains—To summit of spur and continue over same.

170.00 chains—To edge of dry ravine—course S. 67° W. and descend.

173.60 chains—Across ravine and ascend.

175.30 chains—Top of rolling spur and descend.

181.70 chains—To edge of dry ravine—course S. 82° W. and descend.

182.43 chains—To bottom of ravine.

186.50 chains—Across ravine and ascend spur.

194.00 chains—To summit of spur—course S. 49° W. and descend. This spur extends about 20 chs. to plain.

198.17 chains—To edge of dry ravine—course S. W. nearly.

201.60 chains—Intersect line between ranges 4 and 5 west, townships 2 south, 13.14 chs. north of corner to sections 7, 18, 12 and 13. Raised a stone mound in bottom of dry ravine and set a post marked on the

west face of same J. The edge of the plain is about 20 chs. dist. following the general course of the ravine.

205.48 chains—Across ravine and ascend bank.

207.15 chains—Top of bank and ascend spur—course S. W.

212.00 chains—Summit of spur—course S. W.

217.00 chains—Foot of spur and enter plain.

443.63 chains—To edge of right and east bank of "Cañada del Tequesquite"—course N. 22° W.

456.47 chains—Across Cañada and ascend left and west bank.

458.83 chains—Top of bank and enter plain.

502.40 chains—To post in mound of stone at "Pachappa" Hill, the point of beginning, containing 38,887 42/100 acres.

July 12, 1869.

We do hereby certify that we assisted Wm. P. Reynolds, U. S. Deputy Surveyor, in surveying the boundary lines of the Rancho "Jurupa," situated in the county of San Bernardino, in the State of California, and finally confirmed to Abel Stearns, and that said Rancho has been in all respects, to the best of our knowledge and belief, well and faithfully surveyed, and the boundary monuments established according to the laws of the United States, and the instructions of the Surveyor General.

EBENEZER HADLEY, Compassman.
THOS. T. NORRIS, Chainman.
S. H. BUTTERFIELD, Chainman.
JAMES PARKER, Axman.
FELIPE RIBERA, Flagman.

Subscribed and sworn to before me this 16th day of July, 1869.

WM. P. REYNOLDS,
U. S. Deputy Surveyor.

I, Wm. P. Reynolds, U. S. Deputy Surveyor, do solemnly swear that in pursuance of the instructions from Sherman Day, U. S. Surveyor General for the State of California, bearing date of the 14th day of January, 1869, and in strict conformity to the laws of the United States and the said instructions from the Surveyor General, I have well and faithfully surveyed the boundary lines of the Rancho "Jurupa" situated in the county of San Bernardino, in the State of California, and finally confirmed to Abel Stearns, and I do further solemnly swear that the foregoing are the true and original field notes of said survey.

WM. P. REYNOLDS,
U. S. Deputy Surveyor.

Subscribed by said William P. Reynolds, U. S. Deputy Surveyor, and sworn to before me, a Notary Public in and for the County of San Francisco, in the State of Caliifornia, this 25th day of October, 1869.

[Notarial Seal] J. H. BLOOD,
Notary Public.

Clerk's Office U. S. District Court,

District of California.

San Francisco, November 22, 1878.

Received from the claimant of Jurupa Rancho the sum of one hundred dollars for payment of office work in Surveyor General's office, on survey of said Rancho under provisions of Sec. 6, of the Act of July 1st, 1864.

SOUTHARD HOFFMAN,

Clerk.

Signed in Duplicate.

[Endorsed]: Jurupa (Stearns). Receipt Clerk U. S. D. C. $100 for O. W. on amended survey. 268.

San Bernardino, Oct. 1st, 1878.

Surveyor General Wagner, San Francisco, Cal.

Dear General: I see by the papers that the survey of the Jurupa Ranch has not been approved, and a new survey has been ordered. It is the wish of my clients that you make a new survey in person. We feel that our interests are safe in your hands and that if you see to this matter yourself we will be fairly dealt with. If you can accede to our wishes and make the survey, please let me know and the time when you will be here.

I am yr. very resp. Sv.,

C. W. C. ROWELL,

[Endorsed]: 268. C. W. C. Rowell. Oct. 1, '78. Wants Sur. Gen. to make the resurvey of Jurupa in person. Ansd. Oct. 4, '78.

(D) Copy. L. H.

J. M. A. DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE.

Washington, D. C., Feb. 28, 1877.

H. G. Rollins, Esq. U. S. Sur. Gen. San Francisco, Cala.

Sir: For your information and guidance, I enclose herewith a copy of the decision of the Hon. Secretary of the Interior, of 21st inst., in the matter of the Survey of the private land claim in California known as the Rancho "Jurupa" Abel Stearns, Confirmee.

By an examination of said decision it will be observed that the Secretary affirmed the decision of this office, of May 13, 1876, except upon the question raised by Wm. T. Sayward, one of the Appellants, as to the true location of the Pachappa hill, the initial point of the survey, and upon that question you are directed to receive evidence, upon a day to be fixed by you after notice to all parties in interest, including the settlers upon the adjoining lands. You are also instructed to send one of your employees familiar with the Spanish language and conversant with such matters, into the field to make a personal examination on the ground, with a view of determining the true location of the Pachappa Hill and to report the result of such examination to you, after which you will transmit to this office the testimony taken, and other papers filed in the case, together with your report upon the subject.

The expenses incurred on account of the foregoing

will be charged against the Appropriation for Surveys of Private Land Claims.

Very respectfully,

J. A. WILLIAMSON,

Commissioner.

[Endorsed]: 268. Jurupa (Stearns). Copy of Dept. Letter of Feb. 28, 1877, directing examination as to location of the Pachappa Hill.

Genl. Office of J. W. North.

Attorney and Counselor at Law.

San Bernardino, Cal., Nov. 19th, 1878.

Hon. Theodore Wagner, U. S. Surveyor General.

Sir: Permit me to inquire whether the west line of the Jurupa Rancho in this county is yet finally surveyed and settled? And whether any change has been made as to its location, since I saw you at Los Angeles?

After the very full and satisfactory information you were kind enough to give me at Los Angeles and the concurrent statements of Mr. Minto, Mr. Tuffrey and Mr. Polhemus, I thought there could be no further question about the location of that line, and that the Rincon Ranch and Mr. Mayhew's valuable mill property were no longer in danger. I therefore wrote to Mr. Mayhew the information I received from you, and that Mr. Minto would be out in about three weeks, as he informed me, to run the line at the place indicated by you, between the springs that feed Mr. Mayhew's Mill, as was repeatedly stated.

I am now surprised by the information that Mr. Minto with Mr. Tuffrey and Mr. Reynolds came out and ran the line a mile west of the Springs that you pronounced the right ones, cutting off more of the Rincon Ranch than the previous survey, and instead of leaving the mill undisturbed as we were assured by all this line takes the whole of it into the Jurupa Ranch. And Mr. Minto is quoted as saying that this is done in obedience to the wishes of the Commissioner of the General Land Office.

Permit me to inquire if this information is correct, and if the line is settled as I am informed.

Very respectfully,

J. W. NORTH.

[Endorsed]: 268. Jurupa. J. W. North. Nov. 19, 1887. Wants information concerning Minto's resurvey. Ansd. Nov. 23, '78.

RIVERSIDE LAND AND IRRIGATION COMPANY.

Riverside, April 3, 1877.

Hon. H. C. Rollins, U. S. Surveyor General, San Francisco, Cal.

Dear Sir: I am informed by Judge North who has just returned from San Francisco that an agreement had been reached by the parties in interest in the matter of the resurvey of the Jurupa Rancho, now pending before you and that the boundary as located by the Reynolds Survey is the one agreed upon. Judge North states that the design of the agreement was to leave the matter of boundaries just as it is now occupied and recognized by all parties here and that was no doubt

the idea of Mr. Sayward who claimed to represent this company, as also Mr. Felton whose interest it was to maintain the same boundary as conveyed to him by the owners of the Jurupa in their sale to the Southern California Colony Association. Unfortunately for us the interpretation of the Reynolds Survey by Mess. Higbee and Goldsworthy in their survey and subdivision of the property of the Southern California Association does not agree with that of other surveyors, who have had occasion to go over the lines and who differ materially in their surveys. We have purchased from Mr. Fulton his interest in the S. C. C. A. as surveyor and mapped by Higbee & Goldsworthy, their map is recorded in the Recorder's office in this County and we have sold and conveyed lands accordingly and valuable improvements are made upon them, and all supposed to be within the boundaries of the Jurupa.

Now, for the purpose of avoiding further controversies and to settle all these questions fully as they are now matters of compromise I would respectfully request that before the papers are forwarded to Washington that the words as resurveyed by Goldsworthy & Higbie in May, 1871, be inserted after the words "Reynolds Survey." This will no doubt be accepted by all as it simply puts beyond question the eastern line where it was established in 1871, and to which all the settlers have acceded and now recognize as the true line. If this cannot be done, I shall be compelled however unpleasant for me as President of the R. L. & I.

Co. to protest against the resurvey upon the basis agreed upon.

I have written Mr. Sayward fully upon the matter who will also confer with you.

Very Respy. Yr.,
S. C. EVANS,
Pres. R. L. & I. Co.

The survey made by Goldsworth and Higbee being a private survey, cannot be recognized by this office. The survey made by Wm. P. Reynolds, Dep. U. S. Surveyor, being the only survey recognized as official cannot be changed or modified by the substitution of the one made by Goldsworth & Higby.

Should you conclude to file a protest against the stipulation signed in the case of Jurupa—adopting the east line of the survey thereof as made by Reynolds you will please forward the same to this office upon the receipt thereof that it may be forwarded to the Commr. Genl. Land Office with the report and decision of this office in said case.

[Endorsed]: 268. Jurupa Rancho (Stearns) S. C. Evans, Prest. R. L. & I. Co. April 3, 1877. Letter S. C. Evans Riverside Colony, April 3d, 77, Ansd. April 6, 77. 268.

Law Office of Horace Bell,
No. 56 Temple Block.
Special Attention Given to Old Spanish and Mexican Claims.

Los Angeles, Cal., June 17th, 1878.

Dear Sir: Herewith I send you P. O. order for $10, and

wish you to send me copies of the papers in the "Jurupa Ranch" in San Bernardino county granted Sept. 28th, 1838, by Juan B. Alvarado to Juan Bandini. Also if you can send me a trace copy of the last survey of the said Rancho (Minto's I believe.)

And please inform me if Minto's Survey will be returned to your office and advertised in the usual way. Should not the amount sent be sufficient forward by W. F. & Co., C. O. D.

Respectfully,

HORACE BELL,

P. S.—The papers meant are the "Mexican Expediente."

U. S. Surveyor General,

San Francisco.

[Endorsed]: 268. Horace Bell. June 17, '78. Wants copy Expediente and map of Minto's survey. Jurupa. Hopkins made Ex. No map sent receđ. and ansd. June 20, '78.

Office of the Riverside Land and Irrigating Co.

Riverside, Cal. June 1st, 1876.

H. G. Rollins, Esq., U. S. Surveyor General,

My Dear Sir: I have read published notice of the fact that the Hon. Commissioner of the Gen. Land Office has rejected the Reynolds Survey and ordered a new survey in accord with the decree of the U. S. Land Commissioners.—We have a copy of that decree and find it very difficult to establish the boundaries of the Jurupa Ranch to accord therewith, and as soon as you receive the

letter of instructions from the Commissioner. If you will send me a copy of them, you will do me a great favor and I may be able to more fully understand where the boundaries are.

This to me is a very important matter as I have sold some 800 hundred acres of land in or adjoining the town of Riverside which will be cut off from what we have supposed to be the eastern line of the Jurupa. If the station called "Pachappa" as established by Reynolds should prove to be the point established by the Commissioners and if that point should be found to be the true one then our west line will be 7000 varas short as decreed by the commissioners.

Respectfully,

W. T. SAYWARD.

[Endorsed]: Jurupa Bandini. W. T. Sayward. Riverside. 1 June, 1876. Ansd. 5 June, 1876. Relates to a copy of commissioner's decision. 268.

Anaheim, Los Angeles Co., May 26th, 1876.

Genl. H. G. Rollins.

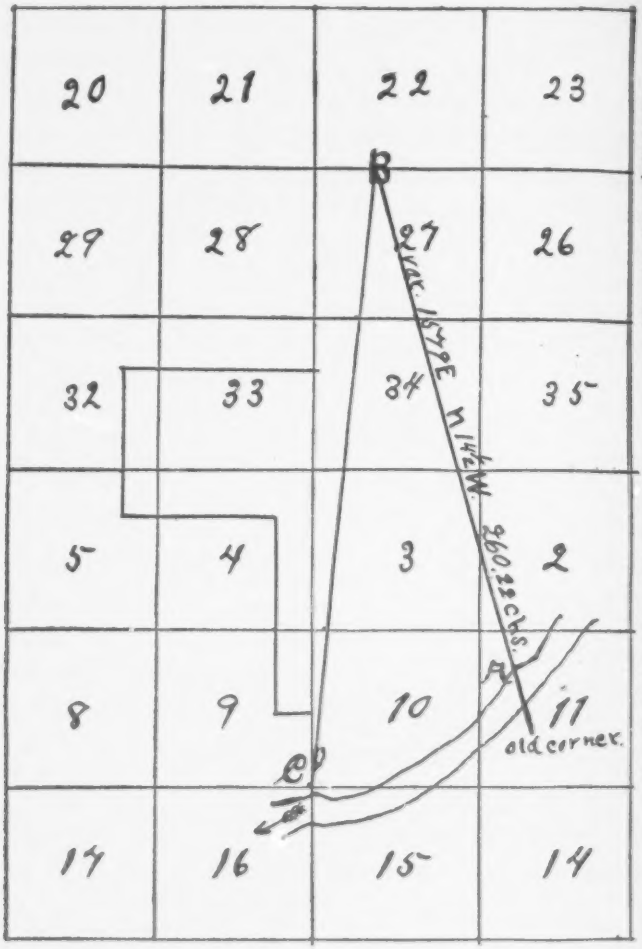
Dear Sir: I see that the Jurupa Rancho is to be resurveyed. I believe Major Hancock made the first survey. If he does not do the work I would like to do it if not inconsistent with your engagements.

I shall be in San Francisco next week. I expect to get money in ten days from the east sufficient to enable me to carry on little surveying jobs.

Yours truly,

JAS. E. FREEMAN.

[Endorsed]: Jurupa Bandini. Jas. E. Freeman. Anaheim, 26th May, 1876. Wants to survey the Rancho. 268.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B
C
2nd ext. 1st pt. N 1/4 W. 260.22 chs.
old corner.
T.28S. R.7W.
T.29S. R.7W.

April 6th, 1870.

Surveyed for Matthews & Sparks, the line represented on the annexed diagram by the line A B which is the western boundary of the Jurupa Rancho. Commencing at a point on the right bank of the Santa Ana River, (marked on the accompanying plat), which point was shown me by Raymundo Yorba, an old resident of the neighborhood, whose father formerly owned the land bounded by this line as the place at or near which the old line crossed the river, and running thence as indicated by said Yorba, with a variation of 15° 19′ east N. 14 1/2 E. 260.22 chains passing two springs or pools of water called by the Indians and Mexicans Uappa; and crossing the Twp line between Twps 2 and 3 south 4.03 ch. west of the corner of sections 34, 35, 2 and 3 to a stake in a sand hill, which was set by government at the corner of said Jurupa Rancho. The diagram is drawn on a scale of 80 chains to the inch. The lines represent section lines and run due east and west or north and south. The heavy line through the centre represents the Twp line. The line B C represents "the line Stearns is contending for" as shown on Reynolds' plat. The other lines (taken from said plat) show portions of the Rincon and Chino Ranchos.

I certify that the line A B is correct and was run by me as shown in the above specifications.

Given under my hand this April 7th, 1870.

J. A. ROUSSEAU CO. SURV.

San Bernardino Co. Cal.

[Endorsed]: 268. 7 Apl. '70. Copy of plat and certificate of line run for Matthews & Sparks. A true copy of the original in my office. J. A. Rousseau, C. S. of S. B. Co.

San Francisco, July 22d, 1878.

Rancho Jurupa finally confirmed to Abel Stearns.

To R. Gibbons, Dr.

To 9 days' work on original plat, copies of same for department and skeleton plats at $6.50½ pr. day.....$58.63½

Received payment,

R. GIBBONS.

I hereby certify that the foregoing account is correct.

THEO. WAGNER,

U. S. Sur. Genl. for Cala.

U. S. Surveyor General's Office, California.

San Francisco, July 22d, 1878.

Jurupa Rancho to H. S. Smith, Dr.

To one copy and tracing of said ranch.....$14.66

Recd. payment,

H. S. SMITH,

Draughtsman.

I hereby certify that the foregoing account is correct.

THEO. WAGNER,

U. S. Sur. Genl. for Cal.

Duplicate.

U. S. Surveyor General's Office, California.

San Francisco, July 24, 1878.

Jurupa Rancho, Abel Stearns, Confirmee.

To D. F. O'Brien, Dr.

For preparing case for patent.....$73.70

Recd. payment,

D. F. O'BRIEN.

I hereby certify that the foregoing account is correct.

THEO. WAGNER,

U. S. Sur. Genl. for Cal.

[Endorsed]: 268. Jurupa (Stearns). Bills of Gibbons, Smith & O'Brien for preparing case for Patent. July 24/78. Paid Aug. 6/78.

State of California,
County of Los Angeles. } ss.

Abel Stearns, being duly sworn according to law, deposes and says that he is a resident of the city and county of Los Angeles. That he is acquainted and knows the "Ranchos" of "Jurupa" "Rincon" and "Chino"; that the rancho of "Jurupa" was owned by Don Juan Bandini and that Don Juan Bandini also owned the Rancho of "El Rincon," which said last-named "Rancho" was granted to Don Juan Bandini as an addition to the "Jurupa" and were considered as one Rancho that afterwards Don Juan Bandini sold to Don David W. Alexander one league of the Western end of

the "Rincon" that there was no vacant land between the "Rincon" "Chino" or "Jurupa"; that the Jurupa and Rincon bounded on each other, that the boundary line of the Jurupa and Rincon was a straight line from the river Santa Ana to the boundary of the "Chino" that affiant had charge of the Jurupa from the year 1846 until he purchased from Don Juan Bandini; that affiant cultivated or had cultivated some of the lands of the Jurupa as early as the year 1846. That he got acquainted with Bernardo Yorba, father of Raymundo Yorba in the year 1832, that the said Bernardo Yorba had affiant to survey his "Rancho" and that in the year 1835 affiant gave him the said Bernardo Yorba Judicial possession of his said "Rancho,' 'that the western line of the Rincon is about five or six miles distant from the east line of the "Rancho" of said Bernardo Yorba; and that the county surveyor of San Bernardino Co. labored under a serious mistake when he asserts in his certificate of survey that "Raymundo Yorba's father formerly owned the land bounded by the "Rincon" and affiant further says, that Bernardo Yorba never owned nor occupied nor claimed the same. That affiants belief is, that the intended and false survey of J. A. Rousseau, caused to be made by Matthews and Sparks (two squatters) as leaders is nothing more nor less than a fabricated survey and plot to rob affiant of the best lands and only good lands on the "Rancho Jurupa" (a thing too often practiced in California on Ranchos); that he has been paying taxes on the said Rancho since the year 1850, to the present time. Affiant has not had time

to go to see Raymundo Yorba to get his deposition in the case, but is quite certain that it would corroborate with the testimony of E. Hadley and Leonardo Cota to the best of his knowledge and belief.

ABEL STEARNS.

Sworn to and subscribed before me this 20th day of May, A. D. 1870.

[Notarial Seal.] CHAS. H. FORBES.
Notary Public.

[Endorsed]: Affidavit of Abel Stearns. No. 268. (May 27, 1870.)

Los Angeles, July 25th, '78.

Hon. Theo. Wagner, U. S. Surveyor General,

Dear Sir: Your favors of the 13th and 22d were received. Will you be good enough to send me at once by express C. O. D. a copy of the instructions of the Hon. Commissioners of the General Land Office in the matter of the Jurupa Survey, and if not strictly prohibited we should much like a certified copy of the plat of the Minto survey at the same time. Both of these are necessary to enable us to file objections to the survey understandingly and it is difficult to see why parties whose rights are directly affected by the survey should not be entitled to a copy of the plat for the purpose of properly making objections to the survey. We represent the owners of the Chino Rancho long ago patented, a considerable portion of which we are informed is included in the Minto Survey of the Jurupa.

Very respectfully yours,

THOM & ROSS.

[Endorsed]: Page 121, Vol. 19, Statutes at Large, says Thom and Ross, Los Angeles, wants copy commssrs. instructions and plat of "Jurupa," Los Angeles, 25 July, 1879. 268. Answd. July 27th.

Carter.

Office of J. W. North.

San Bernardino, Cal., June 3d, 1879.

Hon. Theodore Wagner.

Sir: I learn from the papers that the Jurupa Rancho in this county, is patented. As it may be a long time before I can see the patent permit me to inquire which line of the western boundary survey was finally adopted?

Does the line, as finally fixed, run through any portion of the Rincon Rancho or through Mayhew's property, and does it adopt the line recommended by you east of Mayhew's Mill and between the large springs that supply the mill stream? By giving me this information you will confer a favor on myself and clients.

Can you spare me a copy of Instructions to U. S. Surveyors—I am president and attorney of a mining company that will have several mining claims to survey immediately.

Your obt. servant,

J. W. NORTH.

[Endorsed]: J. W. North. June 3, 1879. Wants information concerning west Bndy. of Jurupa Rcho. confirmed to Stearns. 268. Ansd. June 6, '79.
Ansd. 16 May.

Los Angeles, Cal,. May 13, 1878.

J. A. Robinson, U. S. Surveyor General's Office, San Francisco, Cal.

Dear Sir: Deputy U. S. S. Wm. Minto was here some time ago on his way I understood to re-examine the lines of the "Rancho Jurupa" or "Jurupa" in San Bernardino County. Please inform me if anything was done by him affecting the lines or any line of either of those two Ranchos and greatly oblige yours

Respectfully,
HORACE BELL.

[Endorsed]: Jurupa (Stearns), Letter Horace Bell. May 13, '78. 268. Ansd. May 16, '78.

(Aug. 1, 1877.)

Riverside, Cal., July 16th, 1877.

Hon. H. G. Rollins, U. S. Surveyor General, San Francisco.

Sir: Some weeks ago I wrote to you for information in regard to the Jurupa Ranch case pending before you, and you did not see fit to answer my letter. I have had to obtain my information from others. I had been informed that the parties who stipulated before you to abide by the "Reynolds Survey" were seeking to use Mr. Hopkins and yourself to remove the "Pachappa" and the East line of the said Rancho two miles East, notwithstanding those parties had stipulated and you and Mr. Hopkins had both expressed yourselves strongly in favor of leaving the "Pachappa" and the Ranch lines undisturbed. I wrote very frankly and asked

some plain questions but they were questions that could hurt nobody if all were acting in good faith. I see no reason why you should not have answered them. A score of good citizens whose homes are in peril (and a hundred others who may be placed in the same position whenever it shall please the parties referred to, to remove old landmarks) have a right to be informed as to what is being done in the Surveyor General's Office when all they have in the world is involved in what is going on there.

I am informed from the Southern Pacific Railroad office that since we were at your office, "Mr. Hopkins who was appointed to determine the exact position of the "Pachappa Hill" reported or is about to report that it lies two miles east of the point in the survey described as its locality. Whereupon the parties adverse to the railroad interest have all signed an additional stipulation to the effect that Hopkins in his report has given the point correctly at which "Pachappa Hill" really is. Mr. Brown has refused to sign this additional and explanatory stipulation and so the matter stands at present. In the meantime the Surveyor General believes and will decide in accordance with Hopkins Report."

Permit me to ask, after what has transpired in my presence if this information is mistaken or correct?

I am informed from another source (a man whose home is in Riverside) that you mentioned to our disadvantage that we have "no evidence in the case in favor of the present Pachappa."

I have never known a court to require evidence in a

cause where the plaintiff stipulated to allow the defendant to take Judgment. As you know W. T. Sayward alone had asked to have the location of the Pachappa changed and the order to take testimony in the case was based on his affidavit. You are also aware that W. T. Sayward stipulated to abide by the present line. You will also rememeber that the settlers in Riverside objected to bringing witnesses five hundred miles away from "Pachappa" to give their testimony about its location, and that you promised me that if it should become necessary to take testimony you would have it taken at Riverside.

Now since you deem testimony important in the case and since other parties disregard their stipulation and since Mr. Hopkins is going to report exactly the reverse of what he promised, the settlers of Riverside ask the privilege of introducing testimony and that it be taken at Riverside.

They also ask that the Commissioner before whom testimony shall be taken be an impartial man wholly removed from the influence of those who are seeking to remove this landmark.

Permit me to ask again whether W. T. Sayward has been permitted to file affidavits or other papers in your office or at Washington in connection with this case? The fact that he was securing such affidavits here at the time we are told testimony could not be taken here causes me to make this inquiry.

Permit me also to inquire whether it is really true that after Mr. Felton and Mr. Sayward have stipulated

to abide by the "Reynolds Survey" they are permitted without any notice to the settlers to file papers exactly the reverse of their stipulations? The settlers earnestly desire information and respectfully ask the opportunity to present testimony.

If you could come and look at the ground yourself and at the same time take the testimony, giving all parties notice, it would be gratifying to the settlers.

Yours respectfully,

J. W. NORTH,

Attorney for Settlers.

[Endorsed]: Jurupa (Stearns). J. W. North, atty. for settlers ask several questions relative to the location of the Pachappa and Surveyor General's intention in the matter and requests that evidence (if any) be taken at Riverside. July 16, 1877. 268. Recd. Aug. 1, 1877.

Jurupa (Abel Stearns).

Monday, May 29th, 1876.

Notified B. B. Redding, E. F. Northam and Alfred Robinson, to file statement on appeal on or before Friday, July 28, '76. 268.

Riverside Land and Irrigating Company.

Riverside, May 5th, 1877.

H. G. Rollins, Esq., Sur. Genl.

Dear Sir: Enclosed please find the papers in the Jurupa. It has been concluded to file a stipulation explanatory of the one filed in March, and let that go on also. It is not presumed you could order the field-notes of Reynolds' corrected as the plat is before the Commis-

sioner, otherwise this would be a short way of remedying that branch of the case. There is evidently an error in the call of Reynolds for his point of beginning.

Yours Truly,

E. CONWAY,
Res. Secy.

[Endorsed]: "Jurupa" (Bandini). Letter E. Conway May 5, '77, with papers in case. 268.

Mar. 27, 1877.

U. S. Surveyor-General's Office, California.

San Francisco, March 28, 1877.

In the Matter of the Location of the Pachappa Hill, the Initial Point of the Survey of the Jurupa Rancho in San Bernardino County.

I hereby appear as attorney for the settlers on the Government land lying east of the east line of said Ranch, and who would be injuriously affected by the change of the Pachappa from that recognized by the present survey.

I appear for myself, for D. S. Strong, James Boyd, C. H. Wilbur, John Wilbur, E. G. Brown, E. M. Sheldon, H. P. Keyes, J. H. Hornback, James Patton, Mrs. E. R. Pierce, James P. Greves, Alfred Cridge and Dr. John Hall.

J. W. NORTH,
Attorney for Settlers.

[Endorsed]: Jurupa (Stearns). Appearance of J. W. North, as attorney for settlers.

U. S. SURVEYOR-GENERAL'S OFFICE,
CALIFORNIA.

San Francisco, Jany. 27th, 1879.

To Hon. Theo. Wagner, U. S. Sur. Genl. for Cal.

Dear Sir: In behalf of Mr. Lacy, who wishes to avail himself of the timber culture act on lands bordering on the east boundary of the rancho Jurupa in Tp. 2 S., R. 4 W., S. B. M., I would respectfully ask that said township be relieved from suspension to which I perceive from the last survey and decisions relative to said rancho location there can be no objection.

Very Respy.

Your Obt. Servt.,
HENRY HANCOCK.

[Endorsed]: 2022c. R. 27/1/79. 268. Henry Hancock. Jany. 27, 1879. Wants suspension of 2 S. 4 E. S. B. M. On account of Jurupa released Jany. 27, 1879. Suspension removed.

Los Angeles, March 16th, 1878.

Hon. J. W. Ames, U. S. Surveyor General, San Francisco.

Dear Sir: As there is to be a resurvey made of the Rancho "Jurupa" and as I represent the principal interest in the result of the said rancho, I would respectfully request you to appoint Mr. G. Howard Thompson to make the said resurvey.

I would be pleased to learn your determination in the matter at your earliest convenience.

I remain, dear sir,

Your very respectfully,
ROBERT S. BAKER.

[Endorsed]: (268). Robt. S. Baker, Mch. 16, 1878. Jurupa (Stearns). Wants G. H. Thompson appointed to make resurvey in accordance with order of Feb. 28, '78. Recd. Mch. 20, 1878. Ansd. Mch. 20, '78.

Ansd. May 16, '73. J. H. M.

Los Angeles, May 12th, 1873.

Hon. J. R. Hardenbergh, U. S. Surveyor-Gen. for Cal.
San Francisco, Cal.

Dr. Sir: Please send us copy of the protest of Miguel Bustamente and others against the Survey of the Jurupa "Rancho" in San Bernardino County made by Wm. P. Reynolds and now on file in your office send by Wells, Fargo & Co. marked C. O. D. for your fees.

Respectfully,
McCONNELL & KING,
Attys. at Law.

[Endorsed]: Jurupa Rancho. McConnell & King. Letter concerning copy of protest. Los Angeles, May 12th, 1873. L. C. 361. Jurupa. No. 268.

State of California,
County of Los Angeles. } ss.

E. Hadley, being sworn according to law, deposes and says: That he is a resident of the county of Los Angeles; that he is by profession a surveyor; that he is well acquainted with the "Ranchos" of "El Chino" "Jurupa" and "El Rincon"; that he surveyed the "Rancho" del Rincon in 1858 under instructions of Henry Hancock then Deputy U. S. Surveyor, and that in running the north and east boundary line of the

"Rancho del Rincon" next to the "Chino Rancho" a great deal of the land was left out as government land and that Raymundo Yorba laid school warrants over the same; that the land on which the school warrants were laid is some of the best land of the "Rancho" and in fact the balance of this "Rancho" is worth but little without that land, and that the land left out as being Government, did and does in reality belong to the "Ranchos" of "Jurupa" and "El Rincon" and was left out intentionally for Raymundo Yorba to put on his school warrants as affiant verily believes.

E. HADLEY.

Sworn to and subscribed before me this 19th day of May, A. D. 1870.

[Notarial Seal] CHAS. H. FORBES.
Notary Public.

[Endorsed]: Affidavit of E. Hadley. 268. (May 21, 1870.)

D. L. H.
J. M. A.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

Washington, D. C., Feb. 28, 1877.

H. G. Rollins, Esq., U. S. Sur. Genl., San Francisco, Cala.

Sir: For your information and guidance I enclose herewith a copy of the decision of the Hon. Secretary of the Interior of 21st inst., in the matter of the sur-

vey of the private land claim in California known as the rancho "Jurupa" Abel Stearns confirmee.

By an examination of said decision it will be observed that the Secretary affirmed the decision of this office of May 13, 1876, except upon the question raised by Wm. T. Sayward, one of the appellants, as to the true location of the Pachappa hill, the initial point of the survey and upon that question you are directed to receive evidence upon a day to be fixed by you, after notice to all parties in interest, including the settlers upon the adjoining lands. You are also instructed to send one of your employes familiar with the Spanish language and conversant with such matters into the field to make a personal examination on the ground with a view of determining the true location of the Pachappa hill, and to report the result of such examination to you after which you will transmit to this office the testimony taken and other papers filed in the case together with your report upon the subject.

The expenses incurred on account of the foregoing will be charged against the appropriation for surveys of Private Land Claims.

Very respectfully,

J. A. WILLIAMSON,
Commissioner.

[Endorsed]: 268. G. L. O. February 28, 1877. Jurupa (Stearns). Enclosing copy of Secty.'s decision of Feby. 21, 1877—and directing that testimony be taken and examination be made in field.

D.

J. M. A.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

U. S. Surveyor General, San Francisco, Cal.

Sir: I find upon an examination of the papers in the case of the rancho Jurupa, Rubideau, confirmee, preparatory to the issue of a patent that the plat of survey on file with the case has not been approved by the Surveyor General. You are therefore requested to forward without delay a properly certified copy of the original plat forming a part of the records of your office.

Very respectfully,

J. A. WILLIAMSON,
Commissioner.

[Endorsed]: 268. Commr. Genl. L. O. Nov. 1st, 1876. Jurupa Plat of survey sent on not approved by Sur. Gen. Send traced copy of plat. Plat sent Nov. 13, '76.

RIVERSIDE LAND AND IRRIGATING COMPANY.

Riverside, May 19, 1877.

H. G. Rollins, Esq.

Dear Sir: With this I introduce H. J. Rudisill, Esqr., our Resident Director, who leaves for your city to-morrow.

Mr. R. will advise with you about Jurupa. Mr. Felton has had a very pleasant visit here, and I believe

everything is "en rapport" as far as the company and he are concerned.

Yours truly,

E. CONWAY.

[Endorsed]: Jurupa (Stearns). Letter from E. Conway. May 19, 1877. Introducing H. J. Rudisill and informing office that Felton is "en rapport," etc. 268.

684.

WESTERN UNION TELEGRAPH COMPANY.

Riverside, Cal., Mch. 20, 1877.

Received at San Francisco. 20, 187840 P. M.

To H. G. Rollins, Surveyor Genl.

All settlers desire you to appoint Clarence Haskell a commissioner to take testimony at Riverside as to the location of the Pachappa. Please answer.

J. W NORTH.

23 pd. pd.

S.

[Endorsed]: 268. J. W. North. Mar. 20, 1877. All settlers want Clarence Haskell appointed commissioner to take testimony relative to location of Pachappa. Jurupa—Stearns. 268.

Los Angeles, May 27th, 1876.

Mr. H. G. Rollins, U. S. Sur. Genl., San Francisco, Cal.

Dear Sir: While in San Bernardino two or three days ago I saw it stated in one of the local papers that the survey of the Jurupa Ranch in that county had been rejected and a new survey ordered. If such is the case I

would like to get the contract to survey it and if you will do me the favor to give me the appointment.

You will

much oblige,

Yours very respectfully,

JOHN GOLDWORTHY,

U. S. Dep. Sur.

[Endorsed]: John Goldworthy. Letter, May 27th, 1876. Application to survey the Jurupa Rancho. 268.

209.

WESTERN UNION TELEGRAPH COMPANY.

Riverside, Cala., ——— 3d, 1877.

Received at San Francisco Apr. 3d, 10:30, A. M.

H. C. Rollins, U. S. Surveyor General.

Do not forward papers in Jurupa survey until you hear from me. I write to-day.

S. C. EVANS,

Prest. R. L. & I. Co.

21 pd. F. G.

[Endorsed]: S. C. Evans, Prest. R. L. & I. Co., April 3d, 1877. Hold Jurupa—Stearns. 268.

E. M. M. Copy. B. C. T.

LAND DEPARTMENT OF THE INTERIOR.

Washington, Sept 5th, 1878.

Sir: I am in receipt of your report of the 31st ultimo in the matter of the survey of the Jurupa Rancho, Stearns confirmee.

I concur in the views expressed by you and you are instructed to direct the Surveyor General of California to execute the survey of the Western boundary in accordance with the decision of this department dated February 21, 1877, and the instructions issued by you thereunder on February 28, 1877.

The papers in the case are herewith returned.

Very respectfully,

C. SCHURZ,

Secretary.

Comr. of the Genl. Land Office.

[Endorsed]: 268. 873 D. R. 18/9/78. Jurupa (Stearns). Hon. Secretary of the Interior to Commr. Genl. Land Ofc. Sepr. 5, 1878. Directs resurvey of West bndy.

RIVERSIDE LAND AND IRRIGATION COMPANY.

Riverside, May 4, 1877.

L. L. Robinson, Esqr.

Dr. Sir: I herewith send you a paper Exhibit "D" in reference to Ranch line—which wants to be signed by Alfred Robinson for Jurupa Rancho, H. S. Brown, atty. for R. R., M. M. Estee, atty. for Felton or by Felton himself. We have written Mr. Felton to call at your office and sign it and see that the others do so also if Mr. Felton does not do so please drop each of them a line to call on you or call and see them and have them sign—have it filed with the agreement made in Surveyor Genl.'s office.

Yours Truly,

S. C. EVANS, Pr.

[Endorsed]: 268. S. C. Evans, Pr. R. L. & I. Co. May 4, 1877. Letter to L. L. Robinson enclosing a paper mk'd. Exhibit "D" for signatures of H. S. Brown and M. M. Estee and filing in Sur. Genls. ofc. Jurupa (Stearns).

D. 523 Montg. G. A. F.

L. A. F.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

Washington, D. C., 8th August, 1872.

J. R. Hardenbergh, Esq., U. S. Sur. Genl. Cala., San Francisco.

Sir: Referring to the case of the rancho "Jurupa" in Cala. Juan Bandini conf. L. C. No. 361, I have to request that you procure at the expense of the parties interested and transmit the same to this office, a copy of the final decree of Court on *title*.

Very respectfully,

Your obt. Servant,

WILLIS DRUMMOND,

Commissioner.

[Endorsed]: Willis Drummond, Aug. 18, 1872. Rec. and Ans. Aug. 30, 1872. 268. Wants clerk's cert. in Jurupa Bandini Rcho.

In the District Court of the United States, for the Southern District of California.

ABEL STEARNS, Appellee.
ads.
THE UNITED STATES, Appellants.

No. 213.
"Jurupa."
Transcript 361.

This case coming on to be heard on appeal from the final decision of the United States Board of Land Commissioners to ascertain and settle the private land claims in the state of California, under an act of Congress approved Mch. 3d, 1851, on a transcript of the record and proceedings of said board, and of the papers and evidence upon which said decision was founded and on additional evidence on papers filed in this court, and it appearing that said transcript and the notice of appeal have been duly filed according to law and counsel for the respective parties having been heard.

It is ordered, adjudged and decreed that the said decision of the said Board of Land Commissioners be and hereby is affirmed.

And it is further ordered, adjudged and decreed that the title of the appellee Abel Stearns to the lands claimed in this case is good and valid and the same is hereby confirmed to him as follows:

The lands of which confirmation is hereby made are those known as "Jurupa" situate in the County of San Bernardino to the extent of eleven square leagues and no more—within the boundaries designated in the judicial possession given by said lands to Juan Bandini;

the act of testimonial whereof is on file in the case. Provided that should the quantity of the land within said boundaries be less than eleven square leagues then confirmation is hereby made only of such less quantity.

The said boundaries being as follows: Commencing at the foot of a small hill standing alone, at the Canada which the Messrs. Yorba recognize as their boundary, on the further side of the river Jurupa, which hills the Indians in their tongue call "Pachappa" which was taken for a landmark, placing on it certain stones on top of others; thence course westerly along the bank of said river thirty thousand varas to the point of the same table-land on which Mr. Bandini had established his house and where the said river makes a bend where a stake was driven for a landmark; thence northerly fronting towards Cucamonga seven thousand varas passing between the two springs of Guapau ending at the first white sand bank which there is on said course towards Cucamonga, thence easterly the same thirty thousand varas to a small lone mountain on the left hand of the high road going from San Gabriel to San Bernardino, called by the Indians "Catalmacay" and which was designated as a landmark; thence southerly seven thousand varas to the point of beginning at the foot of the small hill called "Pachappa" which makes a corner, east, west.

And excepting from this confirmation to the appellee such portion of the lands above described as may formerly have been conveyed by Juan Bandini, the original grantee thereof, to Benjamin D. Wilson as set forth in

the original petition herein to the aforesaid Board of Land Commissioners.

Thus done and signed this 5th day of April, 1861.

ISAAC L. K. OGIER,

U. S. Dist. Judge.

Filed Apr. 5th, 1861. G. L. Mix, Clk.

United States of America,
Southern District of California. }

I, Gustavus L. Mix, clerk of the United States District Court for the Southern District of California, do hereby certify the above and foregoing to be a full and true and correct copy of the original as the same appears of record and on file in my office in the case of Abel Stearns, claimant, against the United States for the place called "Jurupa," and I do further certify that said decree stands unreversed and unappealed from.

In witness whereof I have this day hereunto set my hand and the seal of said Court, Los Angeles, October 23d, 1861.

[Seal] G. L. MIX,
Clk.

Pr. John O. Wheeler,
Deputy.

[Endorsed]: No. 213, U. S. Dist. Court, South Dist. Cala. Abel Stearns, Appellee. ads. United States, Appellants. Decree. 268. "Jurupa." J. Bandini.

WESTERN UNION TELEGRAPH COMPANY.

Washington, D. C., 31, 1879.

Received at San Francisco, Mch. 31, 187—, 25 M. P.

To Theo. Wagner, Esq., U. S. Surveyor Genl., San Francisco, Cala.

Suspend hearing in Jurupa case directed twenty-second inst until further orders.

J. A. WILLIAMSON,
Commsr.

25 pd. Govt. F.
O.

[Endorsed]: 2 J. 79. c. R. 1/4/79. 268. Commr. Genl. Land O. March 31, 1879. Suspend hearing in Jurupa Case.

San Francisco, March 8th, 181—.

Jurupa Rancho (Abel Stearns) to J. H. Wildes, Dr.

To Washington map as per estimate.....$65.00

Paid.

J. H. WILDES.

[Endorsed]: 268.

U. S. SURVEYOR-GENERAL'S OFFICE.
San Francisco, Cal.

January 14th, 1869.

Sir: Whereas it appears by a certified copy of a decree placed on file in this office that the claim of Abel Stearns to a tract of land named Jurupa has been finally confirmed by the U. S. District Court for the Southern Dis-

trict of California and whereas application has been made, by the interested parties, for a survey and location of said claim, the estimated funds for the expenses whereof having been duly deposited, I have thought proper to appoint you my deputy in this special case, for the execution of the survey thereof.

Agreeably to the decree in the matter, the claim herein referred to is confirmed in favor of the said claimants, to the following effect: "The lands of which confirmation is hereby made are known by the name of 'Jurupa' situate in the county of San Bernardino, to the extent of eleven square leagues, and no more within the boundaries designated in the Judicial possession given of said lands to Juan Bandini the act of testimonial whereof is on file in the case. Provided that should the quantity of land within said boundaries be less than eleven square leagues, then confirmation is hereby made only of such less quantity.

"The said boundaries being as follows: Commencing at the foot of a small hill standing alone, at the cañada which the Messrs. Yorba recognize as their boundary, on the further side of the river of Jurupa which hill the Indians call in their tongue 'Pachappa' which was taken for a landmark placing on it certain stones on top of others thence course westerly, along the bank of the said river thirty thousand varas to the point of the same table land on which Mr. Bandini had established his house and where the said river makes a bend where a stake was driven for a landmark;thence northerly fronting towards the mountains of Cucamonga, seven thou-

sand varas passing between the two springs of 'Gaspar' ending at the first white sand bank which there is on said course towards Cucamonga; thence easterly the same thirty thousand varas to a small lone mountain on the left hand of the high road going from San Gabriel to San Bernardino, called by the Indians 'Tecamalcay' and which was designated as a landmark; thence southerly seven thousand varas to the point of beginning at the foot of the small hill called 'Pachappa' which makes a corner east, west, and excepting from this confirmation to the appellee such portion of the lands above described as may formerly have been conveyed by Juan Bandini, the original grantee thereof, to Benjamin D. Wilson as set forth in the original petition herein to the aforesaid Board of Land Commissioners.

Section 7 of the act of Congress of July 1st, 1864, provides:

"That it shall be the duty of the Surveyor General of California, in making surveys of the Private Land Claims finally confirmed to follow the decree of confirmation as closely as practicable, whenever such decree designates the specific boundaries of the claim; but when such decree designates only the out boundaries within which the quantity confirmed is to be taken the location of such quantity shall be made, as near as practicable, in one tract and in a compact form. And if the character of the land, or intervening grants, be such as to render the location impracticable in one tract, then such separate location shall be made as nearly as practicable in a compact form.

You will therefore make your survey in accordance with the requirements of the law, and said decree of confirmation.

You will therefore accurately ascertain and properly measure, run and mark the exterior boundaries of the claim, and restrict it to the confirmed quantity.

In all other respects you will comply with the printed instructions of this office dated April 9th, 1864, a copy of which is herewith enclosed for your information and guidance.

SHERMAN DAY,
U. S. Surveyor-Gen'l, California.

W. P. REYNOLDS, Esq.,
U. S. Dep. Sur.

[Endorsed]: 268. Instructions January 14th, 1869. Rancho Jurupa (A. Stearns). W. P. Reynolds, Dep. Surveyor.

U. S. SURVEYOR GENERAL'S OFFICE.
San Francisco, Cal.
January 14th, 1869.

Sir: Whereas, it appears by a certified copy of a decree placed on file in this office that the claim of Abel Stearns to a tract of land named "Jurupa" has been finally confirmed by the U. S. District Court for the Southern District of California, and, whereas, application has been made, by the interested parties, for a survey and location of said claim—the estimated funds for the expenses whereof having been duly deposited—I have thought proper to appoint you my

Deputy in this special case, for the execution of the survey thereof.

Agreeably to the decree in the matter, the claim herein referred to is confirmed in favor of the said claimants, to the following effect: "The lands of which confirmation is hereby made are known by the name of 'Jurupa' situate in the county of San Bernardino to the extent of eleven square leagues and no more within the boundaries designated in the Judicial possessions given of said land to Juan Bandini the act of testimonial whereof, is on file in the case. Provided that should the quantity of land within said boundaries be less than eleven square leagues then confirmation is hereby made only of such less quantity.

"The said boundaries being as follows: Commencing at the foot of a small hill, standing alone at the cañada which Messrs. Yorba recognized as their boundary on the further side of the river of Jurupa which hill the Indians call in their tongue Pachappa which was taken for a landmark, placing on it certain stones on top of others; thence course westerly along the bank of the said river, thirty thousand varas to the point of the same table-land on which Mr. Bandini had established his house and where the said river makes a bend, where a stake was driven for a landmark; thence northerly fronting towards the mountain of Cucamonga, seven thousand varas passing between the two springs of Gaspar ending at the first white sand bank which there is on said course towards Cucamonga; thence easterly the same thirty thousand

varas to a small lone mountain on the left hand of the high road going from San Gabriel to San Bernardino, called by the Indians 'Tacamalcay' and which was designated as a landmark; thence southerly seven thousand varas to the point of beginning at the foot of a small hill called 'Pachappa' which makes a corner east, west, and excepting from this confirmation to the appellee such portion of the lands above described as may formerly have been conveyed by Juan Bandini, the original grantee thereof to Benjamin D. Wilson as set forth in the original petition herein to the aforesaid Board of Land Commissioners.

Section 7 of the act of Congress of July 1st, 1864, provides: "That it shall be the duty of the Surveyor General of California, in making surveys of the Private Land Claims finally confirmed, to follow the decree of confirmation as closely as practicable, whenever such decree designates the specific boundaries of the claims; but when such decree designates only the out-boundaries within which the quantity confirmed is to be taken, the location of such quantity shall be made, as near as practicable in one tract and in a compact form."

And if the character of the land, or intervening grants be such as to render the location impracticable in one tract, then each separate location shall be made as nearly as practicable in a compact form. You will therefore make your survey in accordance with the requirements of the law and said decree of confirmation.

You will therefore accurately ascertain and properly measure, run and mark the exterior boundaries of the claim, and restrict it to the confirmed quantity.

In all other respects you will comply with the printed instructions of this office, dated April 9th, 1864, a copy of which is herewith enclosed for your information and guidance.

SHERMAN DAY,
U. S. Surveyor Genl., California.

W. P. REYNOLDS, Esq.,
U. S. Deputy Sur.

[Endorsed]: 641. Instructions January 14th, 1869. Rancho "Jurupa." A. Stearns, Bandini. W. P. Reynolds, Surveyor. 268.

D. L. H.
File. W. R. I.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

Washington, D. C., April 10, 1879.

Theo. Wagner, Esq., U. S. Surveyor General, San Francisco, Cala.

Sir: In the case of the Rancho "Jurupa" Abel Stearns, confirmee, you were instructed by my telegram of 31st ultimo, to suspend until further orders, the hearing directed in my letter to you of 22d ultimo, in pursuance of the order from the Hon. Secretary of the Interior of 11th ultimo, a copy of which was then furnished you.

I now enclose to you a copy of a letter from the Honorable Secretary of the Interior of 4th instant recalling for the reasons stated by him his said letter of 11th ultimo and directing the issuing of a patent upon the survey of Jurupa recommended by you and therefore my said instructions of 22d ultimo are hereby abrogated and will be treated by you as of no effect.

Respectfully,

J. A. WILLIAMSON,
Commissioner.

[Endorsed]: (268.) Comr. G. L. O. April 10, 1879. Jurupa (Stearns). 3161 C. R. 19/4/79. Explanatory of Telegram of 31st ult. Enclose copy of letter from Secretary of the Interior dated April 4, 1879. 268.

RIVERSIDE LAND AND IRRIGATING COMPANY.

Riverside, April 24, 1877.

H. G. Rollins, Esqr.

Dear Sir: We are getting up full exhibits for your consideration in the Jurupa matter, as far as the Felton and our interest (which are identical with that of the settlers) are concerned. They will be ready in a few days when all parties can act understandingly in the matter.

Respy.
Your obt. Servt.
E. CONWAY,
Res. Secy.
R. L. & I. Co.

[Endorsed]: 268. E. Conway, Secy. Riverside Land & Irrigating Co. 24 April, 1877. Are getting up full

exhibits and will send them in a few days. Jurupa—Stearns.

Genl.

J. W. NORTH.

Attorney at Law,

San Bernardino, Cal., Sept. 10, 1878.

To the Honorable U. S. Surveyor General.

Sir: Settlers upon the Rincon Rancho in this county feel that a great wrong has been done them by the recent survey of the Jurupa Rancho, which takes more than a thousand acres of land from the Rincon; and imperils the property on which they have lived under a survey that has remained undisturbed for more than twenty years.

The Commissioner of the General Land Office informs me by letter of August 13th that this line of Mr. Minto's survey is yet undetermined; and I am informed by parties interested in the question that you are to come down and examine the line in person, which we all hope you will do.

Permit me to inquire whether you will be able to come and when? Permit me also to ask to be notified when you will be here, that I may have the opportunity of laying before you such facts as I have that may throw some light on the question.

Yours very respectfully,

J. W. NORTH.

[Endorsed]: 842c. R. 12/9/78. Jurupa (Stearns). Judge North wants to know if General is coming down to examine west bndy. and if so when. Sept. 10, 1878. 268. Ansd. Septr. 16, 1878.

Los Angeles, Apr. 14, 1878.

J. A. Robinson, Esq., Chief Clerk U. S. Sur. Genls. Office, San Francisco.

Sir: I forward you by mail the field notes of Survey of the Rancho "Jurupa." I have run the west boundary in accordance with the direction of the Hon. Commissioner of May 13, 1876, thereby conflicting with the Ranchos El Rincon and Santa Ana del Chino. I then ran the boundaries of so much of those ranchos as was included by my survey and give the notes of such lines and also the tabling and calculations of area both including and excluding the territory in conflict.

Very respectfully,

WM. MINTO.

(Apr. 16, 1878.)

[Endorsed]: Jurupa (Stearns). Wm. Minto, Dep. Sur. with field-notes and tabling of his survey April 14, '78. 268.

(Dec. 19, 1879.)

Los Angeles, Dec. 18th, 1879.

T. Wagner, U. S. Surveyor Genl., San Francisco.

Sir: Will you please inform me if there has been a U. S. Patent granted to the lands of "Jurupa" Ranch, San Bernardino. If so to whom, what date of filing of

pat. If the whole entire amount of land or if only a portion, if so which.

Please direct answer to undersigned at Rincon, Chino P. O., San Bernardino.

Yours,

J. C. RALPH.

[Endorsed]: 1719 D. R. 19/12/79. J. C. Ralph. Dec. 18, '79. Has Jurupa been patented. Ansd. Dec. 19, '79. 268.

State of California, }
County of Los Angeles. } ss.

Leonardo Cota, being duly sworn, according to law, deposes and says that he is a native of California and a resident of the county of Los Angeles; that for the last twenty years has lived on the "Rancho" of "El Rincon," and for a long time has been acquainted with the "Ranchos" of "Jurupa," "El Chino" and "El Rincon" and many other ranchos in the county of Los Angeles; that the "Rancho" of "El Rincon" was sold to David W. Alexander by Don Juan Bandini and by David W. Alexander to Isaac Williams, and by Isaac Williams to Berardo Yorba; that affiant married one of the daughters of Bernardo Yorba, and that after his marriage went to live on the "Rancho" of "El Rincon" and has lived there ever since to the present time; that he has grazed stock on the said "Rancho" of "Rincon" for a long time. That the boundary line between the "Jurupa" and the "Rincon" is a straight line between the two "Ranchos" from the river Santa Ana to

the eastern boundary line of the "Chino Rancho"; that the said "Rancho" of "Rincon" is bounded on the N. E. by the "Jurupa," on the east by the river "Santa Ana," on the south by the "Zanga" near the foot of the hills, and on the west by the "Rancho del Chino"; that he never knew that there was any government land between any of the three ranchos of "Jurupa," "Rincon" or "Chino"; that at the time a survey was made by Henry Hancock, Depty. U. S. Surveyor, there was a piece of land left out on which Raymundo Yorba located some school warrants; that the land left out was some of the best land on this "Rancho"; that affiant knows well the boundaries of those "Ranchos," and that there never was any vacant land between them, and that the lands marked on the map as being Government lands must be one of the many mistakes of Henry Hancock. That affiant does believe that the lands left out as vacant lands, was done knowingly, for Don Juan Bandini was the owner of the "Rancho" of "Jurupa," and afterwards asked for the "Rincon Rancho" as an addition to the "Jurupa" and affiant cannot see how any land could be left out between these two "Ranchos" to the best of knowledge, information and belief.

LEONARDO COTA.

Sworn to and subscribed before me this 20th day of May, A. D. 1870.

[Notarial Seal] CHAS. H. FORBES,
Notary Public.

[Endorsed]: Affidavit of Leonardo Cota. 268. (May 21, 1870.)

Alta California Newspaper Office.

San Francisco, ————, 1870.

M. Sherman Day, To Fred'k MacCrellish & Co., Dr.

9934 Jany. 28, Ad. Notice 1½ 1 anx.....$6.00

Paid,

COLEMAN.

U. S. Surveyor General's Office,

San Francisco, Cal. January 27, 1870

Notice.—In compliance with the first section of an act of Congress, approved July 1st, 1864, regulating surveys of Private Land Claims notice is hereby given that the following surveys thereof have been made, viz.:

Rancho Jurupa: Surveyed by Wm. P. Reynolds, June and July, 1869, Abel Stearns, Confirmee. The plats will be retained in this Office, subject to inspection for ninety days from the date thereof.

SHERMAN DAY,

U. S. Surveyor Geñeral.

Ja. 28-4F.

[Endorsed]: 268. Alta California. Jurupa. $6. Jany. 28, '70. 268.

Aug. 29, 1872.
Notice to
Judge North
Alfred Robinson
Capt. Northam
Kewan & Howard
Alfred Park.
Jurupa.

[Endorsed]: 268. Set for Monday, Sept. 9th, 1872, at 10 A. M.

(Jun. 11, 1880.)

San Bernardino, June 8, 1880.

Surveyor Genl.

Dear Sir: Please send C. O. D. by express a copy of the map of the Rancho Jurupa as Patented to Abel Stearns duly certified.

Respectfully,

Your Obedient Servant,

P. J. STOCKMAN,

Catholic Priest.

[Endorsed]: 3745 D. R. 11-6-80. P. J. Stockman, June 8, '80. San Bernardina. Wants copy of map of Rancho Jurupa—Abel Stearns—sent by express C. O. D. 268.

Answd. 2/5/78.

J. W. NORTH.

San Bernardino, Cal., April 29, 1878.

U. S. Surveyor General, San Francisco,

Sir: Permit me to make a few inquiries in regard to the recent survey of the Jurupa Rancho in this County.

When Mr. Minto was here he thought this was the final survey and that there would be no further question in regard to the lines of the Jurupa near Riverside but was not certain but that the line near the Rincon might be advertised. Parties at Rincon request me to obtain the information they desire—Permit me to inquire.

Ques. 1. Is Mr. Minto's survey final as to the whole

rancho or will a part or whole of the lines be still subject to objection? And if any what part?

2. When will the plats be furnished to the local land office for the Government land adjoining Riverside, viz.: T. 2 S. R. 5 W., San Bernardino base line and meridian?

Any other information in regard to this ranch will be gratefully received.

Yours very respectfully,

J. W. NORTH.

[Endorsed]: Jurupa (Stearns). Letter J. W. North, April 29, '78. Makes inquiries relative to Survey. 268.

J. W. NORTH,

Attorney at Law.

San Bernardino, Cal., Feb. 11, 1878.

Gen. J. W. Ames, U. S. Surveyor Gen.

Sir: Since the Secretary of the Interior has given his final decision as to the lines of the Jurupa Rancho; and has decided in favor of the Reynolds Survey as traced by Goldsworthy & Higbee would it not be well to let Mr. Goldsworthy retrace his own line and re-establish his own landmarks? The settlers all desire the line they settled by; and this would secure it unmistakably I think all parties would be best satisfied with this method of finishing the work.

May I inquire when this line will be finally run, as also the other lines of the Ranch? Also how soon the patent will probably issue? Also when the Government land adjoining Riverside can be surveyed and opened to Pre-emption?

Excuse my numerous questions. The settlers look to me, and ask all these questions constantly. These Government lands have been unofficially surveyed by Mr. Goldsworthy. If he should retrace that survey it would be satisfactory to the settlers, if it would to the Government.

Very respectfully,
Your Obedient Servant,
J. W. NORTH.

(In lead pencil.)

I think a new man would be preferable. I have great confidence in Mr. Minto as a proper person to make the survey. Mr. Goldsworthy is a very good man, but I believe that this matter requires a person who will have nothing to guide him but the official data from this office. J. W. Wildes, Chief Dr. & Expr. of Surveys.

[Endorsed]: J. W. North. 268. Atty. San Bernardino. Feb. 11th, 78. In relation to the survey of lines of Jurupa Rancho. Ansd. Feb. 14th, '78.

(Mar. 29, 1877.)

Before the U. S. Surveyor General for California.

In the matter of the location of the "Pachappa Hill" the initial point of the survey of "Jurupa Rancho" confirmed to Abel Stearns, now pending and testimony being taken therein before the U. S. Surveyor General at San Francisco; wherein the following parties appear as contestants, viz.: The Southern California Colony Association and Riverside Land and Irrigating Company, represented by W. T. Sayward, C. N. Felton, represented by M. M. Estee, Esq.: The Southern Pacific Railroad

Company represented by Harvey S. Brown, Esq., and the settlers on the Government land at Riverside whose claims would be affected by the decision in the case, to wit: Alfred Cridge, John Hall, Mrs. E. R. Pierce, James P. Greves, J. W. North, J. H. Hornback, U. P. Keyes, E. G. Brown, E. M. Sheldon, John Wilbur, C. W. Wilbur, D. S. Strong, James Patton and James Boyd represented by J. W. North, being all the parties having claims on the Government land near and adjoining the east line of Jurupa Rancho, and the United States represented by J. M. Cogle.

All the said parties appearing before H. G. Rollins, U. S. Surveyor General at San Francisco, it is hereby stipulated and agreed—

1st. That in consideration of the fact that the east lines of the Jurupa Rancho was established in 1869, and that all parties in interest have recognized said line as fixed and acquired property rights and made improvements pursuant thereto and further that the town of Riverside has been built upon property the title to which was deemed settled and that any change in said line woull unsettle the title thereto and affect in a large degree the property of a thriving community, therefor.

2d. And whereas a large number of settlers have built for themselves houses and made valuable improvements along and on the extreme eastern boundary of said Rancho believing said lands were public lands.

3d. And whereas uncertainty in relocation to the title of these lands just being improved amounts to what would be an actual loss of the lands.

4th. Now therefore we consent and agree that the East line of the Jurupa Rancho as surveyed by W. T. Reynolds, Dep. U. S. Surveyor, in the months of June and July, A. D. 1869, may remain as fixed and surveyed by him, and respectfully request the department for the above reasons and for the graver reasons which the Surveyor General of California will make in his report in this matter to approve said survey so far as said eastern line of said Rancho is concerned.

[Endorsed]: In the matter of the survey of the Jurupa Rancho confirmed to Abel Stearns rough draft of stipulations. 268. (Mar. 29, 1877.) Filed March 29, 1877.

Copy.

File.

DEPARTMENT OF THE INTERIOR.

Washington, April 4, 1879.

Sir: Referring to your letter of the 2d instant, in which you report that both of the surveys of the Jurupa Rancho in California, returned by the Surveyor General are accompanied by field-notes, and are in a condition to be approved, and patented, I have to state that in view of the request contained in the letter of Hon. Montgomery Blair, attorney for complainants, dated the 26th ultimo, the instructions of the department dated the 11th ultimo, ordering an investigation, are herewith recalled, and you are instructed to issue a patent upon the survey of said rancho, approved by the Surveyor General of California, December 28, 1878, containing 32,-

259 16/100 acres. The letter of Mr. Blair is herewith transmitted to be filed with the papers in the case,

Very respectfully,

C. SCHURZ,

Secretary.

Commissioner of the General Land Office.

[Endorsed]: (268). 3161 c. R. 19/4/79. Jurupa—Stearns. Copy Secty. Interior to Commr. Genl. Land Ofc. April 4, 1879. Directing that patent issue. Recd. with Commrs. letter of April 10, 1879.

Los Angeles, Feb. 14th, 1878.

Mr. J. W. Ames, U. S. Sur. Genl., S. F. Cal.

Dear Sir: I am just now in receipt of a letter from Judge North of San Bernardino, Atty. for Settlers, stating that a decision has been reached by the Secty. of Intr. in the case of the Jurupa Rancho and stating there would probably have to be a resurvey and expressing a preference for me.

If there is a resurvey I should be very glad if you would appoint me. I am well acquainted with the lines, having rerun most of them and with the history of the case—I should also like you to give me a contract to complete the subdivision of Tps. 2 S. Ranges 3 and 4 W., San Bernardino Meridian. The settlers in these townships have been anxious for years to have me make a Gov. Survey for them, and if you will so order it, if there is no money in the treasury for public surveys, I think I can get them to make a private deposit.

Please let me hear from you very soon in this matter and oblige.

Yours very respectfully,

JOHN GOLDSWORTHY,

U. S. Deputy Surveyor.

[Endorsed]: 268. (Feb. 19, 1878.)

Office of Boren & Conroy.

San Bernardino, Cal., Aug. 23, 1874.

Surveyor General, San Francisco, Cala.

Sir: I would respectfully inquire from you upon items concerning the Jurupa Grant in this County. About the time of the confirmation of said grant by the then Surveyor General of this State there was entered in the office of that official a protest against the confirmation.

Would you please look over the files of your office and see if there is still there the protests of Matthews & Sparks. What would be the probable cost of a transcript of the entire action taken as shown by your books relative to this Grant mentioned. I have thought the General Land Office at Washington obtained the outline and a brief history of the grant as officially reported, and would be much better satisfied should I be able to receive through your office, the entire record of the case.

You will please give me such information as is consistent with your duties and as is available to you at the present.

I am respectfully,

F. M. CONROY,
San Bernardino, Cala.

[Endorsed]: F. M. Conroy. Letter. Aug. 23, 1874. In relation to the Jurupa Grant. No. 268.

U. S. Surveyor General's Office, California.

San Francisco, March 28th, 1877.

In the Matter of the Location of the Pachappa Hill, the Initial Point of the survey of the Jurupa Rancho in San Bernardino County.

I hereby appear as attorney for the settlers living on the southern portion of the Jurupa Rancho according to the Reynolds Survey, who will be seriously injured if the initial point known as the Pachappa remains as now located and who in good faith settled on said lands as belonging to the United States if the said initial point be located according to the decree of confirmation.

A. PARKS,
Atty. for Settlers.

[Endorsed]: In the matter of the survey of the Rancho "Jurupa" confirmed to Abel Stearns. Appearance of A. Parks, as atty. for settlers. 268. (Mar. 29, 1877.)

Answer Sept. 13th.

STARKE'S HOTEL.

San Bernardino, Cal., Sept. 7th, 1875.

Hon. Jas. T. Stratton, San Francisco.

Dear Sir: Will you please inform me how the late confirmation of the survey of the Jurupa grant affects its southern boundary as surveyed by Reynolds. If it does not affect said boundary will you give me the estimate for deposit for the survey of sections 32, 33. 34 of range 2 south 5 west. These three sections are as near—I can find out all the unsurveyed land in this township and lay between the south boundary of the Jurupa grant and the north boundary of the Hartshorne Tract of land. Please answer as soon as convenient and oblige,

Yours Resp.

RODNEY K. SHERWIN,

San Bernardino Land Agency.

[Endorsed]: 268. Rodney K. Sherwin. Letter. Sept. 7, 1875. Relative to the Reynolds Survey of the "Jurupa Grant"; also in relation to T. 2 S. R. 5 W. S. B. M. 268.

Office of U. S. Sur. Genl.

San Francisco, Dec. 30th, 1873.

Hon. I. R. Hardenbergh, U. S. Sur. Gen'l.

Sir: In obedience to your letter of instructions of December 5th directing me to make an examination on the ground of certain land marks in relation to the survey of the Rancho of Jurupa as ordered by the Hon. Commissioner of the Genl. Land Office in his letter of

instructions to you dated August 16th, 1873, I beg to make the following report:

In relation to the first point to be examined, to wit: "The location of the Pachappa Hill, and if any other hill than that shown on the survey by U. S. Deputy Surveyor Reynolds in June and July, 1869, will answer this call of the decree." I find that the socalled Pachappa is an isolated hill located as shown on the Reynolds Survey of the Jurupa Rancho; and that there is no other hill in the neighborhood known as Pachappa Hill.

In this connection the Hon. Commissioner calls attention to the fact, that in the Juridical possession of the Rancho of la Serra Vicente Sepulveda confirmee, this hill seems to be called for as a boundary of the lands of B. Wilson, or what is known as a part of the Jurupa Rubidoux tract.

I am of the opinion that the small hill referred to in the juridical possession of the Rancho la Sierra (Vicente Sepulveda) as the boundary of the property of Don Benito Wilson is identical with the Pachappa Hill of the Jurupa Survey. It is true that the eastern boundary of the Wilson tract as surveyed does not reach the Pachappa hill; this, however, may be accounted for, on the supposition that in 1846, when possession was given to Sepulveda of La Sierra, it was perhaps vaguely understood by the parties giving the same, that the hill referred to was one of the boundaries of the Wilson tract. It will be observed that no juridical possession was given by the Wilson tract,

and since the boundaries of the tract were only to be found in the deeds of conveyance of said tract, the probabilities are that in 1846, the boundaries were not generally known.

In relation to the second point to be examined that is "the character of the land south of the river Santa Ana and within the present survey of the Jurupa Rancho I find: That the Santa Ana river, at this place like most of the rivers of Southern California, where they flow through valleys has a wide, sandy bed, and that the stream is very wayward and capricious in its movements, often shifting from one place to another; to the south of the stream, along the line as shown on the plat of survey as the southern boundary of the Jurupa Rancho, there is a bluff bank in many places almost perpendicular. This bank, the Surveyor in his field-notes, I think properly calls "high bank of river." Between this bluff bank and the stream, there is a narrow strip varying in width as shown by the plat of the survey; on this strip there are some spots which are probably of some value, but taken as a whole, it cannot be considered as of much consequence.

The character of the Santa Ana River at this place is similar to that of the Santa Clara River where it flows through the valley of the Sespe.

The third point directed to be examined is the location of Bandini's house referred to in the final decree on title in this case.

To ascertain the location of the house established by Bandini, I questioned several native Californians, and

other old residents of the neighborhood, if they knew the location of the house of Bandini—they told me that they knew where it had stood but that nothing was now left but the ruins of the same.

These parties pointed out to me an elevated spot a short distance north of the Santa Ana River, at this place I found what appeared to be the ruins of an adobe building of considerable dimensions and these the parties questioned told me were the ruins of the house built by Bandini.

This spot is known on the accompanying traced copy of the Survey of the Rancho Jurupa by a circle and the word ruins which I have placed therein.

But it seems to me that this cannot be the point mentioned in the record of juridical possession as the termination of the first line measured, to wit, "la punta de la misma mesa su que el Sor Bandini tiene establicida la casa y da vuelta el repetido rio" (the point of the same table-land on which the Senor Bandini has established the house and where the said river makes a bend or turn) for the following reasons.

First. It is far short of the distance (30,000) varas called for as the length of this line in the juridical measurement.

Second. At this point, the river makes no turn as called for in the record of possession.

Third. The second call of the juridical measurement is from south to north, the line running between the two aguajes (springs) of Gaspar, and terminating at the first white sand knoll. The Gaspar Springs are

situated about due west of the ruins of the Bandini house as pointed out to me, and the first white sand knoll, as but little to the north of west.

The fourth point directed to be examined is the location of the first white sand bank mentioned in the final decree and the character of said bank at a point reached by running a straight line from the southern point of course 22 north passing between Gaspar Spring as said course and springs are shown on the official plat of survey in this case.

In respond to this inquiry, I have to say, that the location of the first white sand knoll as seen from the plain is as near as I could tell at or in the neighborhood of the place marked on plat of survey "First white sand bank," this is a sand knoll formed, I think, by the action of the wind; and from this point, running to the northeast, there is a succession of similar sand knolls, which are plainly to be seen from the plain on the south.

A line running north from the southern point of course No. 22 would not pass between the Springs Gaspar nor would it strike the first sand knoll, but would strike a similar one at post J. 29 and a line running from the southern point of course 22, and passing between the springs Gaspar would fall to the west of the first sand knoll referred to.

In relation to the location of the Sanjou or aqueduct, at the southeast corner of the official survey of the Roubideaux tract, I have to say—that the Sanjou referred to, is a natural one, which is now filled up, but

which can easily be traced as laid down on the plat of the survey, and which as far as I can learn formerly entered the river about the southwest corner of the Roubideaux tract as surveyed, but that the great flood of 1861 and 1862 so changed the bed of the river as to alter the junction of said Sanjou with the river washing away a portion of the same, and at the same time filling up the remainder of this natural Sanjou, as shown on the plat of the survey.

All of which is respectfully submitted.

R. C. HOPKINS.

Subscribed and sworn to before me this 2d day of January, 1874.

J. A. ROBINSON,

U. S. Commissioner.

[Endorsed]: Hopkins Report "Jurupa."

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE.

Washington, D. C., May 13, 1876.

U. S. Surveyor General, San Francisco, Cala.

Sir: I have carefully considered the papers received from your office in the matter of the survey made in June and July, 1869, by United States Deputy Surveyor Wm. P. Reynolds, of the Rancho Jurupa, in California, confirmed to Abel Stearns by the United States District Court of the Southern District of California.

The grant for this rancho was made to Juan Bandini on the 28th of September, 1838, by Juan B. Alvarado. There is no petition to the Mexican authorities nor is

there any diseño among the original papers in this case nor is there in the grant any description of the land other than a reference to the original petition and diseño. Juridical possession was given to Bandini on the 5th of December, 1838, by Luis Arenas, Alcalde, the lines run being as follows: "Being at the place and cañada where the Messrs. Yorbas had formerly established their boundary line the cord was extended to the foot of a little mountain which stands alone at the aforesaid cañada which the Messrs. Yorbas '(Yorbus)' had established for a boundary to the other side of the river Jurupa which little mountain the Indians in their language called Pachappa, and which was taken for a landmark placing on it a pile of stones. Course east to west there were measured and counted along the bank of said river thirty thousand varas which terminated at the point of the same table-land where Mr. Bandini had established the same and where the said river makes a turn." "Thence extending the cord course south to north in front of the mountain of Cucamonga there were measured and counted seven thousand varas, crossing between the two springs of Guapau (Gaspar), which terminated at the first white sand bank which is in said course to Cucamonga." Thence "the cord was stretched course west to east thirty thousand varas, which terminated at an isolated small mountain which (is) on the left of the road that runs from San Gabriel to San Bernardino which the Indians call Catalmacy. Thence north to south seven thousand varas which terminated at the same foot of the little

mountain called Pachappa where the remeasurement commenced in which the extent of land there are seven leagues."

On the 25th of September, 1852, Bandini presented his claim to the Board of Commissioners for California, and on the 17th of October, 1854, said board confirmed the claim and the case having been considered on appeal in the United States District Court for the Southern District of California, a decree was therein rendered on the 5th day of April, 1861, by which the "Jurupa" was confirmed to Abel Stearns, as follows:

"The lands of which confirmation is hereby made are those known as 'Jurupa,' situate in the county of San Bernardino, to the extent of eleven square leagues and no more within the boundaries designated in the juridical possession given of said lands to Juan Bandini the act or testimonial whereof is on file in the case provided that should the quantity of land within said boundaries be less than eleven square leagues then confirmation is hereby made only of such less quantity.

"The said boundaries being as follows: Commencing at the foot of a small hill standing alone at the cañada which the Messrs. Yorba recognized as their boundary on the further side of the river of Jurupa, which hill the Indians in their tongue call 'Pachappa' which was taken for a landmark placing on it certain stones on top of others; thence course westerly along the bank of the said river thirty thousand varas to the point of the same table-land on which Mr. Bandini had established his house and where the said river makes a

bend where a stake was driven for a landmark; thence northerly fronting towards the mountains of Cucamongo, seven thousand varas passing between the two springs of Guapau (Gaspar), ending at the first white sand bank which there is on said course towards Cucamonga; thence easterly the same thirty thousand varas to a small lone mountain on the left-hand of the high road going from San Gabriel to San Bernardino, called by the Indians 'Catalmacay,' and which was designated as a landmark; thence southerly seven thousand varas to the point of beginning at the foot of the same hill called 'Pachappa' which makes a corner east west."

"And excepting from this confirmation, to the appellee, such portion of the land above described as may formerly have been conveyed by Juan Bandini, the original grantee thereof, to Benjamin D. Wilson as set forth in the original petition herein to the aforesaid Board of Land Commissioners."

An appeal was taken from this decree to the United States Supreme Court which issued its mandate dismissing the appeal, and the said mandate having been in due form presented, it was ordered by the aforesaid United States District Court March 2, 1875, that "claimant have leave to proceed under the decree of confirmation heretofore entered herein as under final decree."

A survey of this rancho was made in June and July, 1869, published under the act of July 1st, 1864, in January and February, 1870, and approved by your predecessor on the 26th of February, 1872.

It will be observed that by the final decree of confirmation this is a grant defined by specific boundaries on the earth's surface and that therefore the quantity must be determined by the said boundaries.

It is proper to state at this point that upon a former examination of this case it was deemed expedient, in order to arrive at a better knowledge of the prominent landmarks laid down as boundaries in the decree of confirmation, to order an examination in the field as to the location of the same on the earth's surface.

Instructions to this effect were issued by this office, on the 16th of August, 1873, and the particular features of the official survey to be examined and reported upon were:

1st. The location of the hill Pachappa and if any other hill than that shown on the survey by the United States Deputy Surveyor Reynolds in June and July, 1869, will answer this call of the decree.

2d. The character of the land south of the river Santa Ana and within the present survey of the Jurupa Rancho, and the exact location of the south bank of the said river.

3d. The location of Bandini house referred to in the final decree on title.

4th. The location of the "First white sand bank" mentioned in the final decree and the character of said "bank" at a point reached by running a straight line from the southern point of the course 22 north, passing between Gaspar springs as said course and Springs are shown on the official plat of survey.

In pursuance of these instructions your predecessor Mr. Hardenberg on the 5th of December, 1873, sent into the field R. C. Hopkins, Esq., who reported under oath with a diagram accompanying his report as follows:

1st. That the so-called Pachappa is an isolated hill located as shown on the Reynolds survey of the Jurupa Rancho; and that there is no other hill in the neighborhood known as Pachappa hill.

2d. That the Santa Ana river at this place like most of the rivers of Southern California where they flow through valleys has a wide sandy bed, and that the stream is very wayward and capricious in its movements, often shifting from one place to another. To the south of the stream along the line as shown on the plat of survey as the southern boundary of the Jurupa Rancho, there is a bluff in many places almost perpendicular, this bank the surveyor in his field-notes "I think properly calls" "high bank of river" and between this and the stream there is a narrow strip varying in width, as shown on the plat of survey. On this strip there are some spots which are probably of some value, but taken as a whole it cannot be considered of much consequence.

3d. To ascertain the location of the house established by Bandini, he questioned several native Californians and other old residents of the neighborhood who alleged a knowledge of its location but that nothing was now left but the ruins of the same.

These parties pointed out to him an elevated spot a short distance to the north of the Santa Ana river, and at this point he found what appeared to be the ruins of

an adobe building of considerable dimensions; and these the parties questioned alleged were the ruins of the house built by Bandini.

This spot he has designated on the accompanying traced copy of the survey of the Rancho by a circle marked "Ruins."

This expert, however, very pertinently, as I think alleges that this cannot be the point mentioned in the record of juridical possession as the termination of the first line measured viz: "the point of the same table-land on which the Senor Bandini has established his house, and where the said river makes a bend or turn" and assigns the following reasons in support of his theory.

First. "It is far short of the distance (30,000 varas) called for as the length of this line in the juridical measurement."

Second. "At this point the river makes no turn as called for in the record of possession."

Third. "The second call of the juridical measurement is from south to north, the line running between the two aguages (springs) of Gaspar and terminating at the first white sand knoll.

"The Gaspar Springs are situated about due west on the ruins of the Bandini house as pointed out to me and the first white sand knoll is but little to the north of west."

In response to the 4th inquiry by this office, the expert has to say that, "the location of the first white sand knoll, as seen from the plain is, as near as he could tell, at or in the neighborhood of the place marked on the

plat of survey. 'First white sand bank.' He thinks this sand knoll was formed by the action of the winds; and from this point running to the northeast there is a succession of similar sand knolls, which are plainly to be seen from the plain on the south."

"A line running north from the southern point of course No. 22, would not pass between the Springs Gaspar nor would it strike the first sand knoll but would strike a smaller one at post J. 29 and a line running from the southern point of course 22 and passing between the springs Gaspar, would fall to the west of the first sand knoll referred to."

With this very full and comprehensive report as to the general features of the survey, it will be comparatively easy for this office to determine its correctness or otherwise in view of the limits prescribed in the final decree of confirmation; and one of the radical errors apparent in the survey is found in the fact that the deputy surveyor has in several instances in fixing his monuments and directing his lines discarded the plain requirements of the decree and taken for his guidance the boundaries of Conterminous Ranchos.

If this were a confirmation for quantity it would be competent for this office although it cannot enlarge or diminish the area confirmed, if it be found unappropriated by a better title within the exterior boundaries described in the final decree, to examine as incident to its control of the location the whole record and determine which claim has the better title and therefore the privilege of anterior location. But as before observed it

is a confirmation by specific boundaries, the survey of which must be adjudicated pursuant to the provisions of the act of July 1, 1864, one of which, was found in the 7th section of said act directs the Surveyor General in surveying claims of this character "to follow the decree of confirmation as closely as practicable whenever such decree designates the specific boundaries of the claim" and another in the same section directs the commissioner of the General Land Office "to require a substantial compliance with the directions of this section (7) before approving any survey and plat forwarded him."

This act, therefore, essentially modifies the duties relative to these surveys required of the United States Surveyor General of California by the act of 1851. By the 13th section of that act he might when the boundaries of confirmed claims conflicted exercise a power similar to that conferred on the Register and Receiver by section 6 of the act of March 3, 1831, and departing from the lines described in the final decree, make a survey in accordance with such conditional lines or boundaries as might be agreed upon by the parties in interest, or in case the parties failed to agree upon a line, by such lines between the conflicting claims as in his opinion might be "consistent with the principles of justice." But in surveys under the act of 1864, the boundaries set forth in the final decree must be followed when the confirmation is by boundary and not for quantity within larger exterior boundaries, thus leaving the superior title to be determined by the amicable agreement of parties in

interest or by a court of competent jurisdiction after the issue of patent.

The first departure from this rule of law is found in the location of the southwest corner of the survey.

Now, the only point of uncertainty in the case and which has not been established beyond a reasonable doubt is the exact location of Bandini's house; and the only method of establishing this point is by analyzing and comparing the decree, the juridical possession and the testimony of the expert Mr. Hopkins.

Mr. Hopkins says that it cannot be at the point designated by the native Californian and old residents of the place for the reasons that there is no bend in the river at that point and that it falls far short of the distance (30,000 varas) set forth in both the decree and juridical possession as between the point of beginning and the house. And the last reason will apply as forcibly against the location of this point by the survey as by actual measurement it is also found to fall more than a mile short of the said confirmed distance and at the same time, if located at the designated distance in the decree would, as appears by the protraction of the river on the plat of survey, still fall upon a bend of the river.

Fortunately, however, the context of the decree, as well as of the juridical possession supplemented by the testimony of Hopkins and the topography of the plat of survey obviates the necessity of identifying absolutely, the exact location of the said house or it might be said, on the other hand, reasoning from analogy, fixes the said point of location with sufficient certainty to

justify its adoption in settling the boundaries of the rancho. For instance, the location of the "Gaspar Springs" and the "first white sand bank" are given on the plat of survey, and are found to be almost if not exactly on a due north and south line from each other, and the correctness of their locations is certified by Mr. Hopkins. These two Gaspar springs are located within a short distance of each other and on a line almost due east and west, consequently, if a line were established by taking the "first white sand bank" as an initial point and running south between the two springs named, it would necessarily strike the river Santa Ana at a point about one mile west of the southwest corner of the sur vey and thus complement the length of the southern line as established by the decree of confirmation.

Furthermore, the decree of confirmation refers, for description to the juridical measurement which describes the western boundary as running due north and south, and although the decree describes it as a northerly line the proper interpretation must accord with that description which makes certain that which would otherwise be uncertain. It might furthermore be stated that according to the testimony of Mr. Hopkins, a line running northerly from the southwest corner of the survey between the Gaspar Springs would fall to the west of the "first white sand bank" and thus defeat the plain requirements of the confirmatory decree.

It is proper to state, in this connection that the report of Mr. Hopkins alluded to in this decision was adopted in its entirety by this office April 27th, 1875, in the ad-

judication of the survey of Rancho "Jurupa" Roubideau Confirmee, which is located within the exterior limits of this Rancho. The decision of this office in that case was affirmed by the Hon. Secretary of the Interior on the 4th of April, 1876, and consequently must be considered of binding force in the present adjudication of survey.

The proper boundaries, therefore, on the west of this Rancho will be established by running a line north from a point on the Santa Ana River between the "Aguages de Gaspar" so that it shall terminate "at the first white sand bank which there is on said course toward Cucamonga."

Having established, therefore, the northwest corner of the Rancho in accordance with the decree of confirmation the establishment of its northern boundary becomes a matter of importance.

The decree establishes as a boundary from last point a line running "thence easterly the same thirty thousand varas to a small lone mountain on the left hand of the high road going from San Gabriel to San Bernardino, called by the Indians Catalmacay and which was designated as a landmark."

It is only necessary to state in reference to this boundary that the deputy has properly established the northeast corner of the Rancho, but has erred in running his line from a station on the boundary line of the survey of Rancho "Santa Ana del Chino" in a northeasterly direction to Post J. 31, as shown on the plat, where an angle is formed and a direct line run thence to the said northeast corner.

The proper boundary in order to conform with the decree will be a direct line running from "first white sand bank" at the northwest corner to the established corner "Catalmacay" or as it is called in the survey "Tacamalcay" at the northeast corner.

The decree also establishes a direct line as the east boundary of the Rancho beginning at the lone mountain, "Catalmacay" at the northeast corner and running "to the point of beginning at the same hill called "Pachappa" which makes a corner. Whereas the deputy by following the southwestern boundary of Rancho "San Bernardino" has formed an angle at Post J. 33, which is erroneous and must be corrected accordingly.

The survey is therefore rejected and I return herewith the report and exhibit of H. C. Hopkins, Esq., with instructions to amend the survey as you will give notice of this decision to all parties in interest allowing sixty days from notice for appeal and promptly report any subsequent action in the premises.

Very respectfully,

U. J. BAXTER,

Acting Commissioner.

[Endorsed]: Jurupa (Bandini). Commr. G. L. O. 13 May, 1876. Recd. 27 May, 1876. 268. Appeal sent up 29. 1876. Appealed by S. Cal. Colony. Alfred Robinson Evans, Atty. for S. C. C.

(4-699)

DEPARTMENT OF THE INTERIOR.

Office of the U. S. Surveyor General.

San Francisco, Cal., May 31st, 1888.

I, R. P. Hammond, Jr., U. S. Surveyor General for California, do hereby certify that the annexed manuscript pages numbered from 1 to 233 consecutively are full, true and literal exemplifications of original documents on file in this office pertaining to Jurupa Rancho, confirmed to Abel Stearns.

[Seal] R. P. HAMMOND, Jr.,
U. S. Surveyor General for California.

[Endorsed]: Repdts. Ex. 2, 9 and 10. May 6, '89. C. L. B. U. S. Circuit Court, Southern Dist. of Cal. S. P. R. R. Co. vs. Brown et al No. 9. Respondent's Exhibit 2. Filed May 6, 1889. Chas L. Batcheller, Master and Examiner in Chancery. Filed Aug. 9, 1893. Wm. M Van Dyke, Clerk.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of Respondents' Exhibit 2, before Chas. L. Batcheller, Master and Examiner in Chancery filed in my office August 9th, 1893, in the cause entitled The Southern Pacific Railroad Company, Complainant, vs. David R. Brown, et al., Defendants, No. 9, and remaining of record therein.

Attest my hand and the seal of said Circuit Court this 29th day of April, A. D. 1902.

WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 9. U. S. Circuit Court, Ninth Circuit, Southern District of California. The Southern Pacific Railroad Company vs. David R. Brown, et al. Certified copy Respondent's Exhibit 2. Filed Apr. 1, 1902. Plaintiff's Exhibit 5. A. M. Cates, Special Examiner. No. 979. The United States of America vs. The Southern Pacific Railroad Company, et al. Filed May 24, 1902. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No "6"

"A"

"F"

F. I. W.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

Washington, D. C., February 7, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copies, being the record in the matter of the demand made upon the Southern Pacific Railroad Company for the reconveyance of certain lands in the State of California, are true and literal exemplifications of the originals on file or of record in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at

the city of Washington, on the day and year above written.

[Seal] BINGER HERMANN,
Commissioner of the General Land Office.

POINTS OF LAW, STATEMENT OF FACTS AND AUTHORITIES to Accompany Application of Summer B. Wright that the United States Make Demand on the Southern Pacific Railroad Company to Reconvey to the United States the North Half of the Southwest Quarter, and the Southwest Quarter of the Southwest Quarter, and Lot Eight (8) in Section Thirty-three (33), Township One (1) South, Range Five (5) West, San Bernardino Base and Meridian, in San Bernardino County, California, and Within the Los Angeles Land District, Patented to Said Railroad Company under a Mistake and Misconstruction of the Law; and upon Such Company's Failure to Make Such Conveyance that Suit be Brought by the United States Against the Southern Pacific Railroad Company, to Vacate and Set Aside Such Patent.

To the Honorable, The Secretary of the Interior:

The undersigned Sumner B. Wright, respectfully submits to the Honorable Secretary of the Interior, and to the General Land Office his points of law regarding the hereinafter described lands, and his statement of facts and authorities in support thereof.

APPLICANT'S POINTS OF LAW.

Applicant contends for the following legal propositions, viz: That the lands hereinafter described were within the claimed limits of the Jurupa Rancho, a confirmed and patented Mexican Grant, by specific boundaries, when the grant from Congress to the Southern Pacific Railroad Company took effect; and for that reason, the title thereto was then sub judice, and the lands were not then public lands, and consequently did not pass to the railroad company by its grant; but were reserved and excluded therefrom; and that the patent from the United States to the railroad company therefor, heretofore issued, was issued without authority of law, and is void that such lands became public lands in April, 1879, upon the approval of the final survey of the boundaries of the Jurupa Rancho, and issuance of patent therefor; which survey and patent excluded such lands from said Rancho. That thereafter the same were duly surveyed by the United States, and Samuel L. Choate became the equitable owner thereof, by settlement thereon and complying in every respect, as to settlement and residence, with the requirements of the United States Land Laws, as a pre-emption claimant; although his right to file thereon and enter the same as a pre-emption claimant was successively rejected by the register and receiver of the local land office, the Commissioner of the General Land Office, and the Secretary of the Interior, and patent therefor finally issued in August, 1894, to the Southern Pacific Railroad Company. That notwithstanding the rejection by the Land Department, of the pre-emp-

tion filing of said Choate, and notwithstanding the issuance of patent to the Southern Pacific Railroad Company, said Choate upon the compliance with the requirements of the general land laws as to settlement and residence, became the owner in equity of said property, and entitled to the patent therefor. That thereafter all the right, title and interest of the said Choate, acquired by his settlement and residence on such lands, and his attempt to enter the same under the general land laws, as a pre-emption claim, became and now are vested in the undersigned who is the present owner thereof. That the rejection of the filing of Samuel L. Choate, and the issuance of patent to the Southern Pacific Railroad Company, by the Land Department, both resulted from a mistake and misconstruction of the law by the land officers, and that such patent is void, and should be canceled, and the pre-emption filing of Samuel L. Choate should be allowed; and upon proofs being made that he has complied with the pre-emption law, as to settlement and residence, patent should issue to him, or to his successor; and as a preliminary step to that end, the United States should make demand upon the Southern Pacific Railroad Company to reconvey such lands to the United States; and if such demand is refused suit should be brought by the United States, to cancel the Southern Pacific's patent therefor. As this same patent covers about eighteen hundred acres of additional lands in the same category, lying between the accepted and rejected northern boundaries of the Jurupa Rancho (between the Reynolds and Minto surveys thereof) all of which were

erroneously patented to the Southern Pacific Company, one suit might be brought to cancel patent and recover as to the whole of these lands; and this could be done practically for the same cost, as a suit brought solely to cancel the patent for the property here involved. The description of the land here involved is as follows:

The north half of the southwest quarter, and the southwest quarter of the southwest quarter, and lot eight (8) sec. thirty-three (33), township one (1) south range five (5) west, San Bernardino base and meridian in San Bernardino County, California, and within the Los Angeles Land District.

In support of the legal propositions above anonunced, the undersigned submits to the following

STATEMENT OF FACTS.

The Jurupa Rancho is a confirmed Mexican grant by specific boundaries; that at the time the grant by Congress to the Southern Pacific Railroad Company, under the provisions of the act of March 3, 1871, entitled, "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of said road, and for other purposes," took effect, the lands hereinabove described were claimed by the owners of the Jurupa Rancho to be within the exterior boundaries of the said Rancho, and a part thereof, and the same was at such time included within a survey of said rancho made in 1869, by Wm. P. Reynolds, Deputy United States Surveyor, under instructions from the United States Surveyor-General of California; that such survey was never finally approved by

the United States Government, but upon the 13th day of May, 1876, the same was rejected and set aside by the Commissioners of the General Land Office, and the United States Surveyor General was ordered to make a new survey. This action of the Commissioner of the General Land Office was approved by the Secretary of the Interior upon the 21st day of February, 1877, and a new survey of the northern boundary of line of such rancho was in 1878 made in pursuance of such orders of the Commissioner and Secretary; which survey was finally approved April 1879, the United States patent, accoding to the lines of such new survey issued in May, 1879, to Abel Stearns the successor in interest of one Bandini, the original grantee thereof from the Mexican Government.

That the lands hereinabove described were not included within the boundaries of such rancho as finally surveyed and patented.

That the map of definite location of the line of the road of the Southern Pacific Railroad Company opposite the lands in question was filed with the Commissioner of the Land Office in 1873, and the lands in question were within the primary limits of the grant to the Southern Pacific Railroad Company as shown on such map.

That the strip of land lying between the northern boundary of said Jurupa grant, as finally surveyed and patented, and the northern boundary line thereof, as shown by the rejected Reynolds survey thereof was surveyed by the United States Government, and the system of United States Government surveys was extended

thereover including the lands hereinabove described in the year 1889.

That as soon as the lands were so surveyed by the United States Government, and the plat therefor approved by the proper authorities of the United States Government, the lands hereinabove described were settled upon by Samuel L. Choate, who thereupon on the 20th day of September, 1889, offered at the United States Land Office at Los Angeles, California, to make pre-emption filing thereon under the general land laws of the United States, claiming the same to be public lands of the United States, and subject to entry under the United States general laws, and claiming that the same did not pass to the Southern Pacific Railroad Company, under its grant from Congress, because the same was within the claimed limits of the Jurupa Rancho at the time the railroad company's rights thereto would have attached under its grant from Congress, and that at such time the true location of the boundaries of such Jurupa grant was pending and undetermined before the United States Land Department.

That such application of said Samuel L. Choate to make pre-emption filing on such lands, was in the form and contained the matters and statements required by law.

That such application of said Samuel L. Choate to make pre-emption filing upon said land was denied and rejected by the register and receiver of the Los Angeles land office, upon the said 20th day of September, 1889, and the said Samuel L. Choate thereupon and within the

time prescribed by law appealed from the said decision of the said register and receiver of the Los Angeles land office to the Commissioner of the General Land Office.

That such decision of the register and receiver of the Los Angeles land office was by the Commissioner of the General Land Office confirmed upon the 13th day of December, 1890.

That said Choate within the time prescribed by law appealed from the said decision of the Commissioner of the General Land Office to the Secretary of the Interior; and said Secretary of the Interior, by decision dated the 11th day of April, 1892, confirmed the decision of the Commissioner of the General Land Office, and thereafter to writ, upon the 15th day of August, 1894, patent of the United States to the Southern Pacific Company issued for such land and such patent has never been revoked or canceled.

That said Samuel L. Choate resided upon said land continuously from the time of his original application to make pre-emption filing thereon, until about six months after the issuance of United States patent therefor to the Southern Pacific Railroad Company; that the undersigned has succeeded to and is the owner of all the right, title and interest of the said Samuel L. Choate in said premises.

SUMNER B. WRIGHT.

By SHIRLEY C. WARD,

His Attorney.

AUTHORITIES IN SUPPORT OF APPLICANT'S LEGAL POINTS.

To the effect that the Jurupa Rancho was a Mexican grant by specific boundaries, and that lands within its claimed limits when the grant to the Southern Pacific Railroad Company took effect, were reserved and excluded from the railroad grant. See, Southern Pacific Railroad Company vs. Brown and Bray, 68 Fed. Rep. 333, decided by Judge Ross, United States Circuit Court Judge, and the same case decided by the Circuit Court of Appeals in 75 Fed. Rep. 85. These decisions are both based upon and followed the law as expounded in Newhall vs. Sanger, 92 U. S. 761, and Doolan vs. Carr, 125 U. S. 618. The case of the Southern Pacific Railroad Company vs. Brown and Bray established no new doctrine; but merely follows the well established rule of law as previously laid down in Newhall vs. Sanger, and Doolan vs. Carr, supra. But it served the purpose of applying the law in those cases to the facts existing, as to specific lands that were formerly claimed to be a portion of the Jurupa Rancho; and showed that such lands were in the same category as those involved in the case of Newhall vs. Sanger, and Doolan vs. Carr; the law of which cases had been either rejected or misapplied by the land department in passing upon the cases involving title to lands formerly within the claimed limits of the Jurupa grant. While the case of the Southern Pacific Railroad Company against Brown and Bray was pending before Judge Ross, the Southern Pacific Company insti-

tuted in San Bernardino County, California, a suit in ejectment against E. E. Duncanson, and at the same time instituted in Riverside County, a suit in ejectment against Frank A. Hinman, such suits being brought to dispossess the defendants from two tracts of land lying within this same strip, between the Minto and Reynolds surveys of the north line of the Jurupa Rancho. The plaintiff in each case relying upon its patent from the United States of date of August 15th, 1894, being the same patent hereinafter referred to. And the defendants in each case relying upon the claim that the lands were not a part of the grant to the Railroad Company but were reserved therefrom by virtue of the fact that they were within the claimed limits of the Jurupa Rancho, when the railroad grant took effect, and further relying upon the fact that the patent to the railroad company had been issued without authority of law, and that the defendants were the equitable owners of such property, having settled thereon under the United States general land laws and complied with the laws as to residence, and that patent should have issued to them; but by mistake of law had issued to the plaintiff. In each of such cases it was stipulated by counsel for the respective parties, that judgment should abide the final decision in the case of the S. P. R. R. Co. vs. Brown and Bray, in the Federal Court; and when the latter was decided by the Circuit Court of Appeals, holding that the Railroad Company was without title to the lands there involved, such decision was treated as final by the attorneys for the Railroad Company, and it was thereupon

stipulated that the judgment be forthwith entered in the Duncanson and Hinman cases for the defendants, and adjudging that the plaintiff held the legal title in trust for the defendants and that conveyance thereof be made. These cases are merely referred to, to show the department that the Southern Pacific Railroad Company regards the law of such cases as finally settled by the decision of the Circuit Court of Appeals in the Brown and Bray case.

To show that the Secretary of the Interior regards the case of the S. P. Railroad Company vs. Brown and Bray, as conclusively fixing the law as to lands lying between them into and Reynolds surveys of the north line of the Jurupa Rancho, attention is called to the decision of the Secretary, dated August 9th, 1897, in the case of E. E. Duncanson vs. Edward W. Duncanson reported in Vol. 25, of the Land Office decisions, page 108. In this case the Secretary's attention was called to the fact that the patent had been issued to the Southern Pacific Railroad Company, contrary to the law as established by the Brown and Bray case, and it was consequently ordered that a demand be made upon the Southern Pacific Company to reconvey the lands there involved, to the United States, otherwise that a suit be brought to set aside the patent; this latter, however, was not done because the department was afterward advised that the rights to the land in question had been properly settled by the decree of the San Bernardino Court, adjudging that Duncanson was the equitable owner of the land under the United States land laws, and that the Southern Pacific Com-

pany held the legal title for him, and that such legal title be conveyed to the said Duncanson. We submit that since the decision by the Circuit Court of Appeals of the case of Southern Pacific Company against Brown and Bray there can no longer be any doubt that the patent issued to the Southern Pacific Company, for the lands here involved, was without authority of law and void, and that such patent should have issued to Samuel L. Choate; and for these reasons demand should now be made upon the Southern Pacific Company to reconvey such lands to the United States; and upon its failure to do so, suit should be instituted to cancel the Railroad's patent. As the decision in the Brown-Bray case has fixed the law as to the legal status of all the lands lying between the accepted and rejected northern boundary of the Jurupa Rancho, and shown that none of it passed to the Railroad Company, one suit might be brought to cancel the Southern Pacific's patent as to all lands heretofore patented to it within such strip; as this could be done for substantially the same cost as would attach to a suit to vacate patent for the specific tract here involved; this would include eighteen hundred acres besides the tract here involved, all of which has been patented to the Southern Pacific Company without authority of law.

Respectfully submitted

SHIRLEY C. WARD,

Attorney for Sumner B. Wright.

[Endorsed]: Department of the Interior, Received 3834. Aug. 19, 1899. L. & R. R. Div. Points of Law. Statement of facts and authorities in support of Application of Sumner B. Wright that demand be made on the Southern Pacific Railroad Company for reconveyance of certain lands to the United States, or that suit to cancel patent be brought. 1899-1283752.

SHIRLEY C. WARD,

Attorney and Counselor at Law,

Rooms 88, 89 and 90.

Bryson Block.

Los Angeles, Cal., August 12th, 1899.

To the Honorable, the Secretary of the Interior.

Sir: The undersigned hereby asks that the United States make demand upon the Southern Pacific Railroad Company, to reconvey to the United States the following described lands, heretofore patented to such company, viz.: The north half of the southwest quarter, and the southwest quarter of the southwest quarter, and lot eight (8), in section thirty-three (33), township one (1) south, range five (5) west, San Bernardino base and meridian, in San Bernardino County, California, and within the Los Angeles Land District. And in the event of the failure of the Southern Pacific Company to comply with such demand, that suit be instituted in the name of the United States, to cancel and vacate the patent therefor, heretofore issued by the United States, to such company, bearing date August 15th, 1894.

In support of and as grounds for this application, the undersigned encloses herewith, his points of law, statement of facts and authorities for his position.

Yours respectfully,

SUMMER B. WRIGHT,
By his Attorney,
SHIRLEY C. WARD.

[Endorsed]: Department of the Interior, Received Aug. 19, 1899, L. & R. R. Div. 3834. Ward, Shirley C., Los Angeles, Cal., August 12, 1899. Encloses petition of S. B. Wright requesting that demand be made upon the Southern Pacific Railroad Company for the reconveyance of certain lands in the Los Angeles Land District, California, to the United States. Letter to Mr. Ward, Oct. 12, '99. Chief Clerk, Aug. 18, 1899, Department of the Interior.

W. S. B. J. I. P., Department of the Interior, August 19, 1899. Respectfully referred to the Commissioner of the General Land Office for early report in duplicate and return of papers. Thos. Ryan, First Assistant Secretary, Dy.

J. I. P. W. S. B. Department of the Interior, November 3, 1899. Respectfully referred to the Commissioner of the General Land Office for filing with the other papers, returned with Dept. letter of Oct. 11, 1899. Thos. Ryan, First Assistant Secretary. E. M. D.

3834—'99. F. W. C.
L. & R. R. Div. J. I. P.
J. I. P.

DEPARTMENT OF THE INTERIOR,

F. L. C. Washington, October 11, 1899.

The Commissioner of the General Land Office.

Sir: On the 19th of August, 1899, there was filed in this Department the petition of S. B. Wright, requesting that demand be made upon the Southern Pacific Railroad Company for the reconveyance of the N. 1/2 of the S. W. 1/4, S. W. 1/4 S. W. 1/4, and lot 8, section 33, township 1 S., range 5 W., S. B. M., California, and that upon the failure of the company to comply with such demand, suit be instituted by the United States against the company to vacate and set aside the patent issued for said land. Said petition was referred to your office for early report.

By your office letter "F" of September 15, 1899, you reported on said matter and from that report it appears that said tracts are within the primary limits of the grant made by the act of March 3, 1871 (16 Stat. 573), to the Southern Pacific Railroad Company (Branch Line), as shown by the map of general route filed April 3, 1871, in accordance with which the lands were withdrawn by your office letter of April 21, 1871. It also appears that said tracts were included within the claimed limits of the Mexican grant Jurupa as shown by the survey thereof made in 1869, known as the Reynold's survey. Said tracts were listed by said

company October 26, 1891, and patented August 15, 1894.

It appears that the facts in this case are in all essential particulars identical with those in the case of Duncanson vs. Duncanson (25 L. D. 108), and that said lands were erroneously patented to said railroad company on account of its grant, and you recommend that your office be directed to make demand upon the Southern Pacific Railroad Company for the reconveyance of said tracts to the United States.

Your recommendation is approved and you are hereby directed to demand of the Southern Pacific Railroad Company, under the provisions of the act of March 3, 1887 (24 Stat. 556), a reconveyance of said described tracts erroneously patented to said company on account of its grant as stated, and that report be made at the proper time, as to action taken under said demand.

In this connection your attention is also called to the allegation of the petitioner that there are some eighteen hundred acres additional in the same catagory as the tracts herein described. If, on examination, the records of your office confirm that statement, you will also demand of the Southern Pacific Railroad Company a reconveyance of those lands and at the proper time report action taken under said demand.

Very respectfully,

THOS. RYAN,
Acting Secretary,
E. M. D.

End. R. J. F. M. A. P. R.
F. S. S. M.
F. I. W.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 20, 1900.
Address only the
Commissioner of the General Land Office.

Mr. Jerome Madden, Land Agent for Southern Pacific Railroad Co., San Francisco, California.

Sir: Acting under departmental instructions, dated October 11, 1899, copy herewith, in the matter of the petition of S. B. Wright, I hereby make demand upon the Southern Pacific Railroad Company, through you, for the reconveyance to the United States within ninety days from date hereof, of the following tracts in California, situated between the claimed and the patented limits of the Mexican grant Jurupa, and which tracts were erroneously patented to the company, viz.:

Lots 5, 6, 7, 8 and 9, sec. 25, T. 1. S., R. 5 W., S. B. M., containing 105.54 acres, patented August 15, 1894.

S. E. 1/4 S. E. 1/4, and lots 8, 9, 10 and 11, of sec. 31, T. 1 S., R. 5 W., S. B. M., 155.27 acres, patented August 15, 1894.

Lots 3, 4, 5, 6, 7, 8, 11 and 12, and the S. E. 1/4 N. E. 1/4, N. E. 1/4 S. E. 1/4, N. 1/2 S. W. 1/4, and S. W. 1/4 S. W. 1/4, sec. 33, T. 1 S., R. 5 W., S. B. M., 406.83 acres, patented August 15, 1894.

Lots 1, 2 and 3, of sec. 35, T. 1 S., R. 5 W., S. B. M., 82.13 acres, patented August 15, 1894.

Lots 1, 2, 3, 4, 5, and 6, of sec. 5. T. 2 S., R. 6 W., S. B. M., 199.44 acres, patented July 27, 1897.

S. W. 1/4, sec. 1, T. 2 S., R. 6 W., S. B. M., 160 acres, patented November 1, 1897.

Lots 1, 2, 3, and 4, and the S. 1/2 N. W. 1/4, and S. 1/2 N. E. 1/4, sec. 1, T. 2 S., R. 6 W., S. B. M., 299.16 acres, patented August 15, 1894.

Lots 1, 3, 7, 8, 9 and 10, and the S. 1/2 S. W. 1/4, S. W. 1/4 S. E. 1/4, and N. 1/2 S. E. 1/4, section 9, T. 2 S., R. 6 W., S. B. M., 347.62 acres, patented January 9, 1885.

Lots 1, 2, and N W. 1/4 S. E. 1/4, sec. 1, T. 2 S., R. 6 W., S. B. M., 91.21 acres, patented August 15, 1894.

Lots 1, 2, 3, 4, 5, and 7, and N. 1/2 N. E. 1/4, and S. 1/2 N. W. 1/4, sec. 17, T. 2 S., R. 6 W., 310.87 acres, patented August 15, 1894.

Lots 1, of sec. 19, T. 2 S., R. 6 W., 8.11 acres, patented August 15, 1894.

Very respectfully,

BINGER HERMANN,

Commissioner.

KBW.

End. R. J. F. M. A. P. R.

[Endorsed]: Ex. "A." Ex. 6. No. 979. United States of America, vs. The Southern Pacific Railroad Company et al. Filed Apr. 1, 1902. Plaintiff's Exhibit 6. A. M. Cates, Special Examiner. Filed May 24, 1902. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 7.

G. I. R. C.
S. W. W.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., June 17, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of the plat of the Jurupa Rancho, confirmed to Abel Stearns, approved by the Surveyor General of California, February 26, 1872, is a true and literal exemplification from the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal] BINGER HERMAN,

Commissioner of the General Land Office.

[Endorsed]: No. 979. United States of America, vs. The Southern Pacific Railroad Company et al. Filed Apr. 1, 1902. Plaintiff's Exhibit 7. A. M. Cates, Special Examiner. Filed May 24, 1902. Wm. M. Van Dyke, Clerk.

FOLD-OUT IS TOO LARGE TO BE FILMED

Plaintiff's Exhibit No. 8.

"E" Ex. G. C. L. D. B.
J. E.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 12, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of the field-notes of the obsolete survey of a part of the Jurupa Rancho, in the State of California, executed by William P. Reynold, Deputy Surveyor, under instructions from the United States Surveyor General of California, bearing date January 14, 1869, is a true and literal exemplification of the official field-notes of said survey on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal] BINGER HERMANN,
Commissioner of the General Land Office.

FIELD NOTES
of
The Obsolete Survey of the Rancho Jurupa part of Abel Stearns, Confirmee.
By
Wm. P. Reynolds, Deputy Surveyor.
Under the Instructions of January 14, 1869.
Survey Commenced, June 29th, 1869.
Survey Completed, July 12th, 1869.

PRELIMINARY OATHS OF ASSISTANTS.

I, Ebenezer Hadley, having been appointed compassman in the employment of Wm. P. Reynolds, U. S. Deputy Surveyor, do solemnly swear that I will well and faithfully execute the duties confided to me, to the best of my skill and ability.

EBENEZER HADLEY,
Compassman.

Subscribed and sworn to before me this 29th day of June, 1869.

WM. P. REYNOLDS,
U. S. Deputy Surveyor.

We, Thomas T. Norris and S. H. Butterfield do solemnly swear that we will well and faithfully execute the duties of chain carriers; that we will level the chain upon uneven ground and plumb the tally pins, whether by sticking or dropping the same and that we will report the true distance to all notable objects, and the true lengths of all lines we may assist in measuring to the best of our skill and ability.

THOS. T. NORRIS,
Chainman.

S. H. BUTTERFIELD,
Chainman.

Subscribed and sworn to before me this 29th day of June, 1869.

WM. P. REYNOLDS,
U. S. Deputy Surveyor.

I, James Parker, do solemnly swear that I will well and faithfully execute the duties of axman, according to the instructions given me, to the best of my skill and ability.

JAMES PARKER,
Axman.

Subscribed and sworn to before me this 29th day of June, 1869.

WM. P. REYNOLDS,
U. S. Deputy Surveyor.

I, Felipe Ribera, do solemnly swear that I will well and faithfully execute the duties of flagman according to the instructions given me, to the best of my skill and ability.

FELIPE RIBERA,
Flagman.

Subscribed and sworn to before me this 29th day of June, 1869.

WM. P. REYNOLDS,
U. S. Deputy Surveyor.

Field-notes of Survey of Rancho Jurupa finally confirmed to Abel Stearns, situate in the County of San Bernardino, State of California, under instructions from Sherman Day, U. S. Surveyor General for California, dated January 14, 1869, by Wm. P. Reynolds, Deputy Surveyor.

Survey commenced June 29th, 1869.

In accordance with my instructions from the Surveyor General's office, I begin at an old stone mound at the N.

west foot of a small hill standing alone on the plain near the head of a cañada called "Tesquesquite" said hill being a notable object and was pointed out to me by Louis Roubidoux, Jr., (who has resided for nearly 25 years on this Rancho) as the hill called by the Indians "Pachappa" mentioned in my instructions as the point of beginning.

A high detached hill bears N. 24 3/4° W., thence according to the true meridian the variation of the magnetic needle being 14° 32′ E. N. 84 1/2° W. over a nearly level plain and at

62.00 chains—Cross upper road from San Bernardino to the tin mines on Rancho El Sobrante San Jacinto—Course S. 18° W.

118.00 chains—Cross lower road from San Bernardino to the aforesaid Tin mines course S. W. nearly.

120.00 chains—Set a post and drove a charred stake in mound of earth with pits on line, marked said Post J. 2 Station which I also establish as the S. E. corner of a tract of land finally confirmed to Louis Roubidoux being the same tract of land mentioned in my instructions directing me to except in my survey from this confirmation to the appellee (Abel Stearns) such portion of the land described therein as may formerly have been conveyed by Juan Bandini the original grantee thereof to Benjamin D. Wilson and in accordance with said instructions I run as follows: N. 24 1/2° E. along the line confirmed to said Louis Roubidoux and at 15.00 chains—To edge of high bank of table-land 80 feet deep on the south and left side of River Santa Ana course of bank N. 85° W. and N. 25° E.

16.70 chains—To foot of bank and enter river bottom at the edge of an old Sanjon called aqueduct in the decree of confirmation to said Louis Roubidoux. The said Sanjou or aqueduct which is the one mentioned in the aforesaid decree of confirmation to Louis Roubidoux is now filled up by the overflow of the river Santa Ana in the year 1862, at which time a branch of the said river left the main body (up stream) at a point about 2 1/2 miles hence bearing N. 25 1/4° E. It then runs in a direction about S. 35° W. to a point bearing N. 60° W about 55. chs. dist where it turns and runs on a course N. 80° W. a distance of about 60. chs. and unites again with the main body of the river.

The course of the Sanjou called aqueduct in the aforesaid decree of confirmation to said Louis Roubidoux is plainly visible and I continue on this line following the general course of said Sanjou or aqueduct along the foot of the steep bank of table-land and river bottom, through dense growth of low willows and scattering cottonwoods and sycamores, in low swamp bottom and at 99.37 chains—To center of mouth of "Cañada del Tequesquite," a boundary point called for in the said decree of confirmation to said Louis Roubidoux at the junction of the said Sanjou or aqueduct with the said Cañada del Tequesquite.

Drove a charred stake and set a post in mound marked J 3 Station from which a cottonwood tree 22 in diam. bears N. 67 1/2 W. 327 links dist. A sycamore 18 in. diam. bears S. 8° W. 463 links distant.

Thence N. 77 3/4° E. Following up the general course

of the Cañada del Tequesquite a boundary line mentioned in the decree of confirmation to said Louis Roubidoux.

83.80 chains—Set a post and drove a charred stake marked J. 4 Station in a bend of the Cañada.

The general course of the Cañada from the foothills near "Pachappa" hill (the point of beginning of this survey) to this point is N. 22° W. The average width of the Cañada on this line is about 10. to 13 chains; thence N. 24° E. along the line confirmed to Louis Rubidoux.

8.10 chains—Foot of bank of Cañada course N. 70° W. and S. 50° E.

8.50 chains—Top of bank and enter plain.

101.00 chains—Edge of bank of plain and river bottom course S. 38° W.

June 29th, 1869.

101.35 chains—Foot of bank and enter bottom land of river with scattering growth of willows.

229.00 chains—To a point on line between section 1, and 12 10.36 west of 1/4 sec. corner township 2 south, range 5 west of the San Bernardino meridian and at intersection of the south boundary.

"Of the lands conditionally granted to the New Mexicans" as mentioned in the decree of confirmation to said Louis Roubidoux, and also intersect the south boundary of the claim of one Mejillo, one of the said New Mexicans in said decree mentioned who pointed out to me the south line his claim, which corresponded with his deed, a copy of which I made from the original deed or record in Book A of the Records of Los Angeles County.

Drove a charred stake and set a post in mound marked J. 5 Station being the N. E. corner of the tract finally confirmed to Louis Rubidoux. From which post a live willow tree 25 in diam. bears N. 44 3/4° W. 155. links dist. Another willow 13 in diam. bears N. 62 1/4° W. 182 links dist.

Thence west along the northern line of confirmation to Louis Roubidoux through river bottom.

5.50 chains—Enter dense growth of low willows.

41.00 chains—Leave dense growth of low willows.

45.50 chains—To the edge of east and left bank of River Santa Ana Course S. 5° W. the general course of the river is about S. 35° W.

58.70 chains—To edge of west and right bank of river and enter bottom with thick growth of willows, elders and scattering sycamores.

73.45 chains—Foot of steep bank of river bottom—course S. 28° W.

74.66 chains—Top of bank and enter table-land—sloping east.

100.00 chains—Cross road from Roubidoux to Agua Mansa a New Mexican settlement in the part of the Rancho "Jurupa"—course N. 50° E.

155.60 chains—Cross road from Roubidoux to the town of San Bernardino—course N. 30° E.

191.00 chains—To base of steep rocky mountain—course N. and S.

233.60 chains—To summit of same and descend.

248.00 chains—To opposite base of mountain and enter valley of Portazuelo del Chimisal.

270.00 chains—To corner to sections 4, 5, 8 and 9 township 2 south range 5 west.

The said Portazuelo del Chimisal being a point of direction in the decree of confirmation to Louis Roubidoux.

Drove a charred stake and set a post in a mound of stone marked J. 6 station, being the N. W. corner of the tract confirmed to Louis Roubidoux. The Portazuelo del Chimisal bears N. 10° E. about 120 chains distant.

Thence S. 16° W. along the line confirmed to Louis Roubidoux down the valley of Portazue to del Chimisal.

80.00 chains—Leave valley and enter table-land sloping east.

90.50 chains—Cross road from Cucamonga to Rubidoux—course N. 75° E.

The house of Louis Roubidoux bears S. 69° E.

June 30th, 1869.

166.00 chains—House of Roubidoux bears N. 65 1/2° E.

206.80 chains—To base of small conical hill mentioned in the deed from Juan Bandini to Benjamin D. Wilson.

211.00 chains—To summit of hill and set a charred stake and post marked J. 7 station.

Thence S. 16 1/2° west along the line confirmed to Louis Roubidoux.

5.50 chains—To opposite base of hill.

21.50 chains—Cross road from Roubidoux to Rancho El Rincon course N. E. and S. 65° W.

69.40 chains—Drove a charred stake and set a post in mound for witness post marked J. 8 witness station. From which a black willow 20 in diam. bears N. 71° E. 660 links distant.

70.80 chains—To the edge of the north and right bank of River Santa Ana 20 feet deep.

71.10 chains—To foot of bank and enter river—course N. 88° W.

74.00 chains—To a point in the river Santa Ana where the Sanjou or acqueduct as mentioned in the decree of confirmation to Louis Roubidoux, before the overflow of 1862 united with the river.

The said Sanjou or aqueduct mentioned in said decree of confirmation to said Roubidoux is now the bed of the river and formerly made the junction at this point. This being the point mentioned in said decree of confirmation to said Roubidoux as the point of commencement and S. W. corner of his tract which I established as Station 8 of the Rancho "Jurupa."

Thence S. 71 1/4° E. 141.10 along the northern line confirmed to said Louis Roubidoux following the course of the old Sanjou or aqueduct.

13.00 chains—To a point opposite the center of the main stream of the River Santa Ana about 5 chains dist. bearing N. 58° E. course of stream from above to the mouth of main stream S. 58° W.

50.72 chains—To south and left bank of river—course N. 80° W. and enter bottom land.

75.00 chains—Leave Sanjou or aqueduct at foot of

steep bank of table-land 50 feet high, course N. 78° W. and S. 78° E.

77.12 chains—Top of bank and enter table-land.

86.00 chains—At this point I ran opposite the general course of east branch of river from where it leaves the main branch about 2 1/2 miles from this point. Course from thence S. 54° W. to a point N. 32° E. 5 chs. dist. where it turns and runs N. 80° W. to the point of junction with the main stream at the commencement of this course.

141.10 chains—To post and station 2 of Rancho Jurupa and S. E. corner of tract of land finally confirmed to Louis Roubinoux for 1 1/2 leagues, which I also establish as Station 9 of said Rancho "Jurupa."

Thence N. 84 1/2° W. 211.00 chains—Leaving the line of the tract of land confirmed to Louis Roubidoux and running along the high bank of the river at

38.00 chains—Cross a road running down the river—course S. 69° W.

76.00 chains—Top of gradual ascent of table-land. The high detached hill mentioned at the point of beginning as bearing N. 24 3/4° W. now bears N. 52° E.

81.50 chains—Cross a dry gully 60 lks. wide—course N. 5 1/2° E.

106.00 chains—Summit of gradual rise of table-land.

162.00 chains—To summit of low ridge running N. and south nearly.

169.00 chains—Cross a deep dry gully 50 links wide—course N. 50° W.

176 chains—To summit of low hills—course N. and S.

201.00 chains—Cross a deep dry gully 50 links wide —course N. and S.

211.00 chains—To a point on high bank of river bottom.

Drove a charred stake and set a post marked J. 10 Station in a mound of stone, the river on a north course from this point is 15 chs. distant.

July 1st, 1869.

Thence S. 57° W.—Along high bank of table-land on the south and left side of River Santa Ana and at 6.50 chains—Intersect line between ranges 5 and 6 west, township 2 south of the San Bernardino meridian 22.53 chains north of corner to sections 25, 30, 31 and 36.

Drove a charred stake and set a post in mound marked J. on north face.

60.00 chains—Drove a charred stake and set a post in mound marked J. 11 Station. The river on a north course across bottom 18 chains dist. The river bottom from high bank to high bank at this point is about 40 chs. wide.

Thence N. 74° W.—Along high bank of river and at 56.00 chains—Cross a dry gulch 145 lks. wide—course N. 15° W.

69.00 chains—Cross a deep gulch gully 30 lks. wide—course N. W.

70.00 chains—Drove a charred stake and set a post in mound marked J. 12 Station.

The river on the north course is 5.50 chs. dist. The river-bottom from bank to bank is about 25 chs. wide.

Thence S. 76 1/2° W. 66.00 chains— Along high bank of river and at

66.00 chains—Drove a charred stake and set a post in mound of earth and stone marked J. 13 Station. The river is 29.00 chs. dist. on a north course. The bottom from bank to bank is about 50 chs. wide.

Thence N. 67° W.—Along high bank of river and at

33.00 chains—Drove a charred stake and set post in mound of earth and stone, marked J. 14 Station. The river is 25 chs. dist. on a north course. The river bottom from bank to bank is about 50 chs. wide.

Thence S. 87 1/2 W. 94.00 chains—Along high bank of river and at 14.00 chains—A house bears north 150 links dist.

23.00 chains—Across a dry gully 112 links wide—course north.

55.00 chains—A wood house bears north 8 chs. dist. in river bottom.

80.00 chains—To summit of low granite ledge—course N. W. and S. E.

94.00 chains—Drove a charred stake and set post in mound of granite boulders, marked J. 15 Station.

The river on the north course is 19 chs. dist. The river bottom from bank to bank is about 45 chs. wide. The stream is about 15 chs. wide.

Thence S. 55° W.—Along high bank of river, and at 14.00 chains—Cross a dry ravine 240 lks. wide—course north.

40.00 chains—Cross a dry ravine 200 lks. wide—course N. W.

50.00 chains—Cross a dry ravine 150 lks. wide—course N. W.

68.50 chains—Cross a dry ravine 320 lks. wide—course N. W.

76.00 chains—Drove a charred stake and set post in mound of earth and stone, marked J. 16 Station, from which a house on the north and right bank of river bears N. 5 1/2° E. about 40 chs. dist. Another house bears N. 59° W. about 40 chs. dist. The river on a north course is 20.00 chs. dist. The river on a west course is 28.50 chs. dist. The river bottom from bank to bank is about 75 chs. wide. The stream is about 16 chs. wide.

Thence S. 28° W.—Along high bank and at 18.00 chains—Drove a charred stake and at set post in mound of earth and stone marked J. 17 Station. The river on a N. W. course is 25 chs. dist. The river bottom from bank to bank is about 85 chs dist. The stream is about 15 chs. wide.

July 2nd, 1869.

Thence S. 71 1/2° W. 92 chains—Along high bank of river bottom, and at

79.17 chains—Intersect line between township 2 and 3 south, range 6 west, 5.98 chs. west of 1/4 section corner, between sections 6 and 31 set a charred stake in mound marked J. on north face.

92.00 chains—Drove a charred stake and set a post in mound of earth marked J. 18, Station. The river on a north course is 20 chs. dist. The river bottom from

bank to bank is about 65 chs. wide. The stream of river is about 20 chs. wide.

Thence S. 89° W.—Along high bank of river bottom and at 8.56 chains—To edge of steep bank, 60 feet deep and descend.

10.78 chains—To foot of bank and enter river bottom—course S. 65° W.

22.42 chains—Intersect line between ranges 6 and 7 west, township 3 south, 4.54 chs. south of corner to township 2 and 3 south. Drove a charred stake and set a post in mound of earth marked J. on north face.

25.00 chains—Leave river bottom and ascend high bank—course N. 72° W.

27.00 chains—Top of bank.

33.00 chains—To a large mound of granite boulders on the N. W. slope of a small hill. Set a charred stake and post marked J. 19. Station. The river on a N. W. corner is 10 chs. dist. The river bottom from bank to bank is about 45 chs. wide. The stream is about 25 chs. wide.

Thence S. 47 1/4° W.—Along high bank of river bottom and at

22.50 chains—Cross a dry gully 42 links wide—course N. W.

26.00 chains—Cross a dry gully 36 links wide—course N. W.

37.00 chains—Cross a dry gully 55 links wide—course N. W.

70.00 chains—Cross a dry gully 70 links wide—course N. W.

185.00 chains—To a post in mound marked L. S. No. 3, being Station 42 of the final survey of Rancho "La Sierra" finally confirmed to Bernardo Yorba on a high point of bank of table-land and river bottom. The point of table-land mentioned in my instructions as follows: "On which Mr. Bandini had established his house and where the said river makes a bend where a stake was driven for a landmark bears S. 52 1/2° W. 870 chs. dist. Set a charred post marked J. 20. Station.

Thence N. 54° W.—Retracing the line of the final survey of Rancho "La Sierra" finally confirmed to Bernardo Yorba and at 00.40 chains—Commence descent of steep bank—course N. 65° E. and S. 54° W.

2.20 chains—To foot of a bank and enter river bottom with scattering growth of cottonwood, sycamores and willows.

8.83 chains—A charred cottonwood stump 22 in. diam. 10 feet high.

25.42 chains—Edge of east and left bank of river Santa Ana—course S. 46° W. Set a witness post marked J. 21 Station W. P. from which a cottonwood tree 15 in. diam. marked L. S. 2 B. T. bears S. 42° E. 245 links distant.

28.50 chains—To a point in river Santa Ana which I establish as Station 21 of Rancho Jurupa and a previously established corner and station 41 of Rancho "La Sierra" finally confirmed to Bernardo Yorba. From which station the witness tree above mentioned bears S. 53 1/2° E. 307 lks. dis.

Thence S. 56 1/4° W.—Along the line of the said

Rancho "La Sierra" finally confirmed to Bernardo Yorba, down the River Santa Ana and at 51.00 chains—To point of bluff bank on west and right bank of river.

51.60 chains—Leave bank of river—course S. 35° W. and enter bottom land, with dense growth of Guatamaten brush and low willows N. and S.

64.00 chains—Leave dense growth of Guatamaten brush and low willows E. and N.

82.67 chains—To post marked E. R. V. II Station 36 of the final survey of Rancho El Rincon finally confirmed to Bernardo Yorba, also marked L. S. 40 Station of Rancho "La Sierra" finally confirmed to said Bernardo Yorba, which post marked on N. E. face J. 22 Station Rancho El Rincon was formerly a portion of Rancho "Jurupa" and was sold by the original grantee (J. Bandini) of the last-mentioned rancho to David Alexander; Alexander sold to Isaac or Julian Williams and Williams sold to Bernardo Yorba all of which appears on file in the case Rancho El Rincon at the office of the U. S. Surveyor General for California at San Francisco.

Thence north—Leaving the line of final survey of Rancho "La Sierra" finally confirmed to Bernardo Yorba and retracing the line of the final survey of Rancho El Rincon also finally confirmed to Bernardo Yorba and at 12.50 chains—Enter thick growth of Guatamotes and willows—course E. and W.

25.00 chains—Leave Guatamotes and willows and bottom land of river, at foot of base of high table-land and ascend 30.40 chains—Top of table-land.

42.44 chains—To post marked E. R. VIII, Station 37 of final survey of said Rancho "El Rincon" which I establish as Station 23 of Rancho "Jurupa" and marked post J. 23 Station.

July 3d, 1869

Thence west,—Along line of said Rancho "El Rincon" over hilly table-land and at 20.00 chains—To post in mound marked E. R. IX Station 38 of said Rancho "El Rincon" and established the same for station 24 Rancho "Jurupa."

Thence north—Along the line of said Ranhco "El Rincon" over undulating plain and at 3.00 chains—Crossroad running from a house built by Juan Bandini and now owned by Leonardo Caba situate on Rancho El Rincon to River Santa Ana—course N. 51° E. and S. 51°W. The house of Leonardo Caba bears S. 62° W. about 115 chs. dist.

34.00 chains—To bank and descend to moist hollow—course S. 50° W.

36.00 chains—Foot of bank and enter moist bottom of hollow.

38.80 chains—Across hollow to foot of bank.

40.00 chains—Top of bank to table-land.

96.56 chains—To post in mound marked E. R. X. Station 39, of Rancho El Rincon, and establish the same as station 25 of Rancho "Jurupa." From this point I locate the three Cienegas (taken by Henry Hancock in the former survey made by him while a Deputy U. S. Surveyor as the "Aquade Guapas" in running township lines), as follows: N. 28° E. and at 45.87 ch. cross

a stream of pure water 20 links wide and 2 feet deep, course N. 85° W., which rises in the three Cienegas above mentioned at 52.35 chs. to a willow tree 11 in. diam. on west side of West Cienega. Thence S. 87° E. across Cienega at 4.80 chs. leave Cienega, at 21.30 chs. across same stream of water 12 links wide and 12 in. deep; course S. 82° W. from this point down stream and S. 33° W. to this point from above at 22 chs. cross a small stream of water 7 links wide and 3 inches deep from eastern Cienega and at 24.20 chs. to a willow 10 in. diam. on the west edge of Eastern Cienega 3 chs. wide. The stream last crossed joins the main stream at 1 chain below the crossing of this line, thence N. 3 1/2° E. at 70 lks., cross last-mentioned stream and at 9.80 chs. to the extreme eastern point of the Northern Cienega, which is about 4 chs. in diameter and nearly circular. A large volume of water is discharged from this Cienega and runs in general course S. 33° W. for about 7 chs., then the general course of the stream is S. 84° W. (receiving also the water from the other two Cienegas) for about 26 chs., when the stream again turns to the southward on a general course S. 30° W. and discharges into the river Santa Ana on Rancho "El Rincon."

Thence west along the line of said Rancho "El Rincon" over plain sloping gradually to the southward and at 11.25 chains—Cross a stream of water from the three Cienegas above described 25 lks. wide and 4 feet deep, course S. 35° W.

34.00 chains—Set a post and charred stake on north

boundary of said Rrancho "El Rincon" in a mound of earth J. 26, station.

Thence north, leaving the line of the final survey of said Rancho "El Rincon" finally confirmed to Bernardo Yorba over a moist level plain and at 20.00 chains—Intersected line between township 2 and 3 south, range 7 west, 14.00 chains west of 1/4 section corner between sections 4 and 33. Set a charred post marked J. in mound of earth with pits on line.

65.00 chains—A house bears S. 79° W., about 10 chs. dist.

70.00 chains—The east "Aguaje de Gaspar" or spring of Gaspar as mentioned in my instructions bears S. 78° E., 210 lks. dist. The West Aguaje bears N. 40° W. 2.24 links distant. These Aguajes are about 1 chain across and are nearly circular, with the surrounding land, very hard and but little water comes from them. They are situated at the summit of a gentle rise of ground and are conspicuous for some distance off by the green grass continually around them. These springs or Aguajes were shown to me by Don Ygnacio Portilla, who resided at these Aguajes at the time juridical possession was given of this rancho.

74.00 chains—A house bears east 30 links distant.

82.40 chains—Cross a road from Rancho Santa Ana del Chino to San Bernardino, course N. 70° E.

89.60 chains—Intersect the northern boundary line of final survey of Rancho Santa Ana del Chino finally confirmed to M. M. Williams et al., between Stations 2 and 3 of said rancho. Drove a charred stake and set

a post in mound marked J. 27 station. The first white sand bank mentioned in the decree of confirmation in my instructions, as pointed out to me by the aforesaid Don Ygnacion Portilla, is on the Rancho Santa Ana del Chino and bears N. 15° E. 42.87 chs. dist. I therefore run the line of the Rancho "Jurupa" as follows: N. 82° E. along the line of final survey of Rancho "Santa Ana del Chino" over moist level plain and at 62.50 chains—To a stake in mound marked S. A. C. 3 Station for said Rancho Santa Ana del Chino and established the same as station 28 of Rancho "Jurupa."

Thence N. 14 1/2° W., along the line of final survey of said Rancho "Santa Ana del Chino" over moist plain and at 8.00 chains—Cross a road from said Rancho Santa Ana del Chino to San Bernardino course N. 80° E. and S. 80° W.

41.00 chains—Cross a road from Rancho San Jose to San Bernardino course N. 70 E. and S. 70° W.

64.00 chains—Leave moist land E. and W. and enter sandy land.

69.00 chains—To an old stone mound at the foot of a small sand knoll being Station 4, of the final survey of the said Rancho "Santa Ana del Chino" in which mound set a post marked J. 29 station.

Thence N. 69° E. along the line of survey of said Rancho "Santa Ana del Chino" at the south edge of sand hills.

30.00 chains—To post in mound of small stones on the summit of a small sand knoll 15 feet high marked

S. A. C. 5 station A. S. A. C. Station to rancho. "Addition to Santa Ana del Chino" in which mound set post marked J. 30 Station.

July 5th, 1869.

Thence N. 63° E. leaving the line of the final survey of Rancho "Santa Ana del Chino" and Rancho "Addition to Santa Ana del Chino" finally confirmed to M. M. Williams et al., along the southern edge of low rolling sandhills, and at 98.00 chains—Leave sandhills N. E. and S. W. and enter level plain with thick growth of weeds and scattering sage brush.

146.00 chains—Enter sandy plain N. and S.

172.00 chains—Leave sandy plain N. and S. and enter gravelly plain with scattering chaparral and sage brush.

180.00 chains—Enter fine growth of bunch grass N. and S.

249.18 chains—Intersect line between ranges 6 and 7 west, township 2 south, 28.96 chains north of corner to sections 18, 19, 13 and 24. Drove a charred stake and set a post in mound marked J.

July 6th, 1869.

330.00 chains—Leave bunch-grass N. and S. and enter scattering chaparral.

352.00 chains—Leave chaparral N. and S. and enter thick growth of bunch-grass and sagebrush.

378.00 chains—Leave bunch-grass and sagebrush N. and S. and enter light sandy plain.

515.00 chains—Cross-road from Cucamonga to Roubidoux—course at this point N. W. and S. 60° E.

540.00 chains—To base of rolling hills from Jurupa Mountains N. 80° W. and S. 50 E.

585.00 chains—West end of western peak of Jurupa Mountains bears S. 47 1/2° E. about 25 chs. distant.

592.00 chains—Base of Jurupa Mountains 1 chain S.

598.60 chains—Cross highest summit of spurs N. W. and S. E.

654.00 chains—Leave base of rolling hills N. 70° W. and S. 70° E., the base of the mountain about 7 chs. south. These mountains are a high, rocky detached range, very rugged and broken, running N. 76 1/2 E. about 5 1/2 miles and about 1 1/2 to 2 1/2 wide, and about 4,000 feet high above the level of the surrounding plain.

690.00 chains—To an old stone mound at a point about 7 chs. south of the old road from Mission San Gabriel to San Bernardino, where it passes the point of the foothills on the north of the Jurupa mountains. This mound was pointed out to me on a former occasion while passing on the road by Luis Arenas, the juridicial officer, who gave the juridical possession of Rancho "Jurupa" to Juan Bandini as a landmark established at that time. Set a charred post in said stone mound marked J. 31 Station.

July 7, 1869.

Thence N. 76 1/2° E. over rolling land; the base of the "Jurupa" mountains about 8 chs. and at 46.00 chains—Intersected line between township 1 and 2 south, range 6 west, 37.77 chains west of corner to township 1 and 2 S., R. 5 and 6 W. Made a stone mound and set a charred

post marked J. on south base.

84.76 chains—Intersect line between ranges 5 and 6, township 1 south, 9.40 chs. north of corner to sections 1, 6, 31, and 36, made a stone mound and set post marked J. on S. face.

130.00 chains—A sheep camp in the mouth of a cañon about 20 chs. wide, with sycamore timber, bears south about 20 chs. dist., course of cañon N. 16° E.

175.00 chains—Mouth of a cañon about 15 chs. wide, bears south, about 30 chs. dist. Has scattering sycamore timber, course of cañon N. 17 1/2° E.

210.00 chains—To base of spurs of "Jurupa" mountains N. and S. and ascend across the same.

230.00 chains—Cross highest summit of spurs and descend—course of spurs N. 11° W. and S. 11° E.

290.00 chains—Leave foot of spurs and enter rolling land.

294.00 chains—To north edge of road from Rancho "El Rincon" through the "Portazuelo del Chimisal" to Agua Mansa and San Bernardino and continue along the same. The Portazuelo bears S. W. nearly about 25 chs. dist.

301.00 chains—Leave road which from this point runs S. 70° E.

344.00 chains—Cross the same road—course N. E. and S. W. at this point, at about 10 chs. N. E. it joins the road mentioned in my instructions from San Gabriel to San Bernardino. The last mentioned road runs on a course nearly parallel with this line from 5 to 8 chs. dist.

July 8, 1869.

372.00 chains—Enter thick chaparral N. and S.

382.00 chains—Cross a dry wash 3 chains wide—course N. 10° E.

398.00 chains—Leave chaparral N. 15° E. and S. 15° W. and enter rolling table-land.

460.00 chains—Leave table-land N. E. and S. W. and enter scattering chaparral.

461.00 chains—Cross an old road—course N. 30° W. and S. 30° E.

510.00 chains—Chaparral N. and S. and enter open plain.

520.00 chains—Cross road at foot of high bank of table-land—course N. W. and ascend bank.

522.00 chains—Top of bank—course N. 25° W. and S. 25° E.

557.00 chains—Cross road from Roubidoux to San Bernardino—course N. 60° E. and S. 60° W.

581.30 chains—Intersect line between ranges 4 and 5 west, township 1 south, 6.83 chs. north of 1/4 section corner between sections 25 and 30. Made a stone mound and set post marked J. on S. face.

593.00 chains—Cross the old road mentioned in my instructions as "Going from San Gabriel to San Bernardino"—course S. 72° E. The summit of a high, lone, detached hill bears south about 130 chs. dist.

632.00 chains—Enter thick chaparral N. and S.

639.00 chains—Leave chaparral at foot of a small, lone mountain (mentioned in my instructions as "called by the Indians 'Tacamalcay' and located

on the map furnished me from the Surveyor General's office as 'Serrito Salo' and now known and called by the people in this vicinity by the name of Selvoer Mountain") and ascend along the southeastern slope of the same.

645.00 chains—To the extreme eastern point of said mountain "Cerrito Salo" or Tacamalcay. At a stake in stone mound marked S. B. Station No. 1 of the final survey of the Rancho San Bernardino, finally confirmed to Jose del Casuel Lugo, and also the point mentioned in my instructions as "a small, lone mountain on the left hand of the high road going from San Gabriel to San Bernardino and called by the Indians 'Tacamalcay' and which was designated as a land mark." Set a charred post in said mound of stone marked J. 32 Station. The Catholic church in the southern part of the settlement of Mexicans called "Agua Manza," bears S. 33° W. about 80 chs. dist. The town of San Bernardino bears N. 41° E. about 4 1/2 miles distant.

July 9th, 1869.

Thence S. 20° E.—along the line of final survey of Rancho San Bernardino finally confirmed to Jose del Carmen Lugo et als, which at the time said Rancho San Bernardino was surveyed this line was the agreed line between the owners thereof and the owner of the Rancho "Jurupa," the said line was pointed out to me by Jose Maria Lugo on a former occasion who was one of the owners of the Rancho San Bernardino, and was present when the juridical possession was given thereof which was bounded by the former

juridical possession of the Rancho "Jurupa," at 5.00 chains—To foot of hill.

24.00 chains—Cross road from Agua Mansa to San Bernardino—course N. 40° E. and S. 40° W.

24.40 chains—Cross a live willow fence N. 40° E. and S. 40° W. and enter cornfield extending N. E. and S. W. about 6 chs. long with thick growth of low willows on each side.

25.00 chains—Cross an irrigating ditch 18 lks. wide —course S. 38° W.

30.00 chains—Leave cornfield and enter willows.

45.37 chains—Leave willows and enter sandbed of River Santa Ana—course S. 60° W.

52.00 chains—To stream Santa Ana S. 75° W.

60.00 chains—Leave stream Santa Ana.

73.40 chains—Leave sandbed Santa Ana and enter willow timber. This river during the rainy season shifts its bed between the high banks from side to side the entire distance through the "Jurupa" Rancho.

90.00 chains—A house 3 chs. east.

108.00 chains—To a post at foot of high bank in river bottom, the previously established Station 2 and S. W. corner of the final survey of said Rancho San Bernardino finally confirmed to Jose del Carmen Lugo et als.

Thence leaving the line of final survey of said Rancho San Bernardino and ascending bank, and at 112.37 chains—Top of bank course S. 72° W. and N. 46° E.

116.50 chains—To an old stone mound, a boundary monument of the juridical possession of the Rancho

"Jurupa" as pointed out to me on the former occasion aforesaid by the said Jose M. Lugo. Set a post in said mound marked J. 33 Station.

July 10th, 1869.

Thence S. 29° W.—over rolling table-land and at 35.28 chains—Intersected line between township 1 and 2 south, range 4 west, 3.54 chains—east of corner to sections 5, 6, 31 and 32. Set a charred post in mound marked J. on west face of post.

111.00 chains—To base of spur—course S. W. about 45 chs. to plain running out from the N. W. end of the San Jacinto mountains and ascend over same.

116.73 chains—To summit of spur and continue over same.

170.00 chains—To edge of dry ravine—course S. 67° W. and descend.

173.60 chains—Across ravine and ascend.

175.30 chains—Top of rolling spur and descend.

181.70 chains—To edge of dry ravine—course S. 82° W. and descend.

182.43 chains—To bottom of ravine.

186.50 chains—Across ravine and ascend spur.

194.00 chains—To summit of spur—course S. 49° W. and descend. This spur extends about 20 chs. to plain.

198.17 chains—To edge of dry ravine—course S. W. nearly.

201.60 chains—Intersect line between ranges 4 and 5 west, townships 2 south, 13.14 chs. north of corner of sections 7, 18, 12 and 13. Raised a stone mound in bottom of dry ravine and set a post marked on the

west face of same J. The edge of the plain is about 20 chs. dist. following the general course of the ravine.

205.48 chains—Across ravine and ascend bank.

207.15 chains—Top of bank and ascend spur—course S. W.

212.00 chains—Summit of spur—course S. W.

217.00 chains—Foot of spur and enter plain.

443.63 chains—To edge of right and east bank of "Cañada del Tequesquite"—course N. 22° W.

456.47 chains—Across Cañada and ascend left and west bank.

458.83 chains—Top of bank and enter plain.

502.40 chains—To post in mound of stone at "Pachappa" Hill, the point of beginning, containing 38,887 42/100 acres.

July 12, 1869.

We do hereby certify that we assisted Wm. P. Reynolds, U. S. Deputy Surveyor, in surveying the boundary lines of the Rancho "Jurupa," situated in the county of San Bernardino, in the State of California, and finally confirmed to Abel Stearns, and that said Rancho has been in all respects, to the best of our knowledge and belief, well and faithfully surveyed, and the boundary monuments established according to the laws of the United States, and the instructions of the Surveyor General.

EBENEZER HADLEY, Compassman.
THOS. T. NORRIS, Chainman.
S. H. BUTTERFIELD, Chainman.
JAMES PARKER, Axman.
FELIPE RIBERA, Flagman.

Subscribed and sworn to before me this 16th day of July, 1869.

WM. P. REYNOLDS,
U. S. Deputy Surveyor.

I, Wm. P. Reynolds, U. S. Deputy Surveyor, do solemnly swear that in pursuance of the instructions from Sherman Day, U. S. Surveyor General for the State of California, bearing date of the 14th day of January, 1869, and in strict conformity to the laws of the United States and the said instructions from the Surveyor General, I have well and faithfully surveyed the boundary lines of the Rancho "Jurupa" situated in the county of San Bernardino, in the State of California, and finally confirmed to Abel Stearns, and I do further solemnly swear that the foregoing are the true and original field notes of said survey.

WM. P. REYNOLDS,
U. S. Deputy Surveyor.

Subscribed by said William P. Reynolds, U. S. Deputy Surveyor, and sworn to before me, a Notary Public in and for the County of San Francisco, in the Stateof California, this 25th day of October, 1869.

[Notarial Seal] J. H. BLOOD,
Notary Public.

[Endorsed]: No. 979. United States of America vs. The Southern Pacific Railroad Company et al. "G." Filed Apr. 1, 1902. Plaintiff's Exhibit 8. A. M. Cates, Special Examiner. Filed May 24, 1902. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 9.

"I."

G W. H. L.

S. W. W.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE.

Washington, D. C., June 17, 1901.

I, Binger Hermann, Commissioner of the General Landoffice, do hereby certify that the annexed copy of the decision of the Secretary of the Interior dated Feb. 21, 1877, in the matter of the resurvey of the Jurupa Rancho, in California, is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal] BINGER HERMANN,

Commissioner of the General Land Office.

E. M. M. B. C. T.

DEPARTMENT OF THE INTERIOR,

OFFICE OF THE SECRETARY.

Washington, D. C., Feb. 21st, 1877.

Sir: I have considered the case of the private grant, Jurupa, confirmed by Abel Stearns, in California, on appeal from your decision of May 13, 1876, ordering a new survey.

The facts in the case are fully set forth in your decision. The first important point to determine is the true location of the hill "Pachappa" the point of beginning in the survey. You hold that the point established by Deputy Surveyor Reynolds is the correct one. He reports as follows:

Beginning at an old stone mound at the northwest foot of a small hill, standing alone on the plain near the head of a cañada called "Tequesquite" said hill being a notable object, and is called by the Indians "Pachappa" a high detached hill.

This statement is supported by the evidence of Mr. Hopkins, who examined the ground, under instructions from your office.

In the decree of Juridical possession the following description of the point of beginning is given—

After previous observation and calculations for my direction, the cord was extended to the foot of the little mountain which stands alone at the aforesaid cañada which the Messrs. Yorba had established for a boundary to the other side of the river of Jurupa, which little

mountain the Indians in their language call Pachappa, and which was taken for a land mark, placing on it a pile of stones, course east to west there were measured and counted along the bank of said river thirty thousand varas.

In the decree of confirmation the point of beginning is mentioned as a "mound called Pachappa" with a pile of stones placed thereon, running west on the bank of the river thirty thousand varas.

In the appeal from your decision, it is claimed, that the correct location of the "Pachappa" hill is to the east of the point established by Surveyor Reynolds, and in support of this position Wm. F. Sayward files an affidavit in which the following statement appears.

I am acquainted with the Jurupa Rancho as surveyed by Wm. P. Reynolds and know his point of beginning. I have examined the land east of his point of beginning and am satisfied his "Pachappa" hill is not the true Pachappa.

The true Pachappa is a prominent lone mound standing on the bank of a cañada some one and a half miles nearly due east from his point of beginning and is nearly directly south from Talamalcay of Selover Mountain. From the true Pachappa taking it as the starting point, and running thence west along the bank of the Santa Ana River to the high table land opposite the mountains called "Cucannoga" the distance will be near thirty thousand varas and would accord with the call of the decree while the distance as surveyed by Reynolds is only 25,546 varas. I have been on top of the true "Pach-

appa" and found there a mound of rocks some eight or ten rocks piled on other rocks. On the top of it is a flat rock covered over with moss. It appears to be an ancient landmark.

In view of the statements made by Sayward, and of the interests involved, the surveyor general should be instructed to receive evidence on this point.

You will instruct him to receive such evidence, with notice to all parties in interest, and also instruct him to employ an expert to make an examination on the ground, of the points in dispute.

When the report is received and examined you will instruct the Surveyor General to make the resurvey, commencing at the point to be indicated by you as the true "Pachappa" hill, and in conformity with the directions contained in your decision of May 13, 1876, which is affirmed, in all particulars, with the exception of the one indicated above.

The papers transmitted with your letter of October 20, 1876, are herewith returned.

Very respectfully,

[Seal] Z. CHANDLER,
Secretary.

The Commissioner of the General Land Office.

[Endorsed]: No. 979. United States of America vs. The Southern Pacific Railroad Company et al. "J." Filed Apr. 1, 1902. Plaintiff's Exhibit 9. A. M. Cates, Special Examiner. Filed May 24, 1902. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit No. 10.

G. I. R. C.

S. W. W. DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

Washington, D. C., June 17, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of the plat of the Jurupe Rancho, confirmed to Abel Stearns, approved by the Commissioner of the General Land Office, May 23, 1879, is a true and literal exemplification from the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[[Seal] BINGER HERMANN,

Commissioner of the General Land Office.

[Endorsed]: No. 979. United States of America vs. The Southern Pacific Railroad Company et al. Filed Apr. 1, 1902. Plaintiff's Exhibit 10. A. M. Cates, Special Examiner. Filed May 24, 1902. Wm. M. Van Dyke, Clerk.

FOLD-OUT IS TOO LARGE TO BE FILMED

Plaintiff's Exhibit No. 11.

"K"

G. W. H. L.

S. W. W. DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

Washington, D. C., June 17, '01.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of patent issued May 23, 1879, to Abel Stearns for the Jurupa Rancho in the State of California is a true and literal exemplification from the record in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal] BINGER HERMANN,

Commissioner of the General Land Office.

THE UNITED STATES OF AMERICA.

To All to Whom These Presents Shall Come, Greeting:

Whereas it appears from a duly authenticated transcript filed in the General Land Office of the United States that pursuant to the provisions of the act of Congress approved the third day of March Anno Domini, one thousand eight hundred and fifty-one entitled "An act to ascertain and settle the Private Land Claims in the State of California," Juan Bandini as claimant filed his petition on the twenty-fifth day of September, A. D.

one thousand eight hundred and fifty-two, with the Commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of Los Angeles, in which petition he claimed the confirmation of his title to, "that part of the rancho of Jurupa called Guapa," the whole tract as originally granted, which was called Jurupa, containing, according to the terms of the concession "seven leagues of grazing land a little more" situate in the present county of San Bernardino and State aforesaid said claim being founded on a Mexican grant to the petitioner made on the twenty-eighth day of September, A. D. one thousand eight hundred and thirty-eight by Juan B. Alvarado, then Political Chief ad interim of Alta, California, and approved by the departmental Assembly on the twenty-second day of May, A. D. one thousand eight hundred and forty.

And whereas, the Board of Land Commissioners aforesaid, on the seventeenth day of October, A. D. one thousand eight hundred and fifty-four rendered a decree of confirmation in favor of the claimant, which decree or decision having been taken by appeal to the District Court of the United States for the Southern District of California, and Abel Stearns having been substituted as claimant in place of Juan Bandini as appears by the order of the said District Court made on the sixth day of March, A. D. one thousand eight hundred and sixty, the said District Court on the fifth day of April A. D. one thousand eight hundred and sixty-one, in the cause entitled "Abel Stearns, Appellee, ads. The United States, Appellant," rendered its decree as follows, to wit:

"This cause coming on to be heard on appeal from the final decision of the United States Board of Land Commissioners to ascertain and settle the private land claims in the State of California, under an act of Congress approved March 3, 1851, on a transcript of the record and proceedings of said Board, and of the papers and evidence upon which said decision was founded, and on additional evidence and papers filed in this court; and it appearing that said transcript and the notice of appeal, have been duly filed according to law, and counsel for the resective parties having been heard—

It is ordered, adjudged and decreed that the said decision of the said Board of Land Commissioners, be and hereby is affirmed;

And it is further ordered, adjudged and decreed that the title of the appellee, Abel Stearns, to the lands claimed in this case is good and valid, and the same is hereby confirmed to him as follows:

The lands of which confirmation is hereby made are those known as "Jurupa" situate in the county of San Bernardino, to the extent of eleven square leagues and no more, within the boundaries designated in the Judicial possession given of said lands to Juan Bandini, the act or testimonial whereof is on file in the case, provided that should the quantity of land within said boundaries be less than eleven square leagues, then confirmation is hereby made only of such less quantity.

The said boundaries being as follows:

Commencing at the foot of a small hill standing alone at the cañada which the Messrs Yorba recognized as

their boundary on the further side of the river of Jurupa, which hill the Indians in their tongue call "Pachappa" which was taken for a landmark placing on it certain stones on top of others; thence course westerly along the bank of the said river thirty thousand varas to the point on the same table-land on which Mr. Bandini had established his house and where the said river makes a bend where a stake was driven for a landmark; thence northerly fronting towards the mountains of Cucamouga, seven thousand varas passing between the two springs of Guapan ending at the first white sand bank which there is on said course towards Cucamonga, thence easterly the same thirty thousand varas to a small lone mountain on the left hand of the high road going from San Gabriel to San Bernardino called by the Indians 'Catalmacay' and which was designated as a landmark; thence southerly seven thousand varas to the point of beginning, at the foot of the same hill called 'Pachappa' which makes a corner east, west;

"And excepting from this confirmation to the appellee such portion of the lands above described, as may formerly have been conveyed by Juan Bandini, the original grantee thereof, to Benjamin D. Wilson, as set forth in the original petition herein to the aforesaid Board of Land Commissioners."

And thereafter the mandate of the Supreme Court of the United States dismissing the appeal taken by the United States from the decree of the District Court confirming this claim, having been presented and filed in the District Court of the United States for the District

of California, the said District Court on the second day of March, A. D. one thousand eight hundred and seventy-five in the cause entitled "The United States vs. Abel Stearns, substituted for Juan Bandini," ordered "that claimant have leave to proceed under the decree of confirmation heretofore entered herein as under final decree," whereby the proceedings of court upon title became final.

And, whereas, under the thirteenth section of said act of the third of March, A. D. one thousand eight hundred and fifty-one and the supplemental legislation, and in accordance with the proceedings had pursuant to said act and supplemental legislation, there has been deposited in the General Land Office a return with the descriptive notes and plat of the survey of the said claim, confirmed as aforesaid, authenticated by the signature of the United States Surveyor General of the State of California, which descriptive notes and plat of survey are in the words and figures as follows, to wit:

"U. S. Surveyor General's Office,

San Francisco, Cala.

Under and by virtue of the provisions of the 13th section of the act of Congress of the third of March, 1851, entitled 'An act to ascertain and settle the private land claims in the State of California,' and of the 12th section of the act of Congress approved on the 31st of August, 1852, entitled 'An act making appropriations for the civil and diplomatic expenses of the Government for the year ending the 30th of June, 1853, and

for other purposes'; and, whereas, the U. S. District Court for the Southern District of California, rendered a decision whereby it recognized and confirmed the title and claim of Abel Stearns to the tract of land described as Jurupa Rancho, as appears from the certified copy of the final decree of the said District Court a copy of which is hereto annexed, the said tract of land was surveyed in conformity to the grant thereof, and the said decision, and I hereby certify that the accompanying map is a true and accurate plat of the said tract of land as appears by the field-notes of the survey thereof, made by W. P. Reynolds and Wm. Minto, Deputy Surveyors, under the directions of this office, which having been examined and approved, remain of record therein, and are in the words and figures following, to wit:

"Beginning at a stake marked 'J. L.' sixty inches high by four inches square in a stone mound on the southeast slope of 'Pachappa hill' at the intersection of the line run by John Goldsworthy, for course number one and number thirty-three of the Reynolds survey, being the basis of the compromise entered into by the interested parties and referred to by the Honorable Commissioner of the General Land Office, in his decision dated February twenty-eighth, one thousand eight hundred and seventy-eight, from which stake the

1 summit of the Pachappa Hill bears north thirty-

one degrees and thirty minutes west, four chains and forty-three links distant, and running thence, the variation of the magnetic needle being fourteen degrees east along the agreed line, north eighty-six degrees and

fifteen minutes west; at ninety-four links a rocky spur sloping south; at eighteen chains and fifty links, west foot of the Pachappa bears north and south; at twenty chains and thirty links a road bears south and north twenty-five degrees east; at twenty-four chains and seventy-five links the upper ditch of the Riverside Company twenty links wide runs south; thence along a row of Cottonwoods and Willows; at thirty-six chains, and thirty links a ditch six links wide runs south, leaves Willows and Cottonwoods and enters a young orange orchard; at forty-one chains and eighty links a ditch six links wide, course south fifty degrees west; at forty-three chains and fifty links Abbot's house bears south sixty links distant; at fifty-five chains, Mrs. Emory's house on line; at fifty-eight chains a house twenty-four links south; at seventy-three chains a house one hundred and eighteen links south; at seventy-six chains and twenty links lower ditch twenty-five links wide, runs south, comes from north twenty-eight degrees east; at ninety-four chains and twenty links a road from the east runs along line; at ninety-six chains and fifty links a road runs south one hundred and twenty-one chains and fifty-two links to a stake marked 'J. 2' at the point of beginning of the survey of the tract confirmed to Louis Roubideau, Station:

2. Thence along the line dividing this rancho from the Jurupa Rancho, finally confirmed to Louis Roubideau, north twenty-four degrees and thirty minutes east, at fifteen chains edge of high bank of table-land on the southerly side of the Santa Ana River; course

of bank north eighty-five degrees west, and north twenty-five degrees east; at sixteen chains and seventy links foot of bank and enters river bottom at the edge of an old Sanjon or aqueduct now filled up by an overflow of the Santa Ana River; thence following the general course of Sanjon or aqueduct along the foot of steep bank of table-land through dense growth of low willows and sycamores in low swampy bottom, ninety-nine chains and thirty-seven links to charred stake and post marked 'J. 3,' in center of mouth of Cañada del Tequesquite at the junction of said Sanjon, or aqueduct, station from which a cottonwood tree twenty-two inches in diameter bears north sixty-seven degrees and thirty minutes west, three hundred and twenty-seven links distant, and a sycamore tree eighteen inches in diameter bears south eight degrees west four hundred and sixty-three links distant, station;

3. Thence following up the general course of the Cañada del Tequisquite north seventy-seven degrees and fifteen minutes east, eighty-three chains and eighty links to a post and charred stake marked 'J. 4' in southeasterly bend of the Cañada, station;

4. Thence north twenty-four degrees east, at eight chains and ten links foot of bank of cañada, course north seventy degrees west and south fifty degrees east; at eight chains and fifty links foot of bank and enters plain; at one hundred and one chains edge of plain, course south thirty-eight degrees west, at one hundred and one chains and thirty-five links, foot of bank and enters river bottom with scattering growth of willows, two hundred and twenty-nine chains to charred stake

and post in mound marked 'J. 5' station on line between sections one and twelve, township two south, range five west, ten chains and thirty-six links west of quarter section corner and being also intersection of the south boundary of the lands conditionally granted to the New Mexicans'; from the station above described a live willow tree twenty inches in diameter bears north forty-four degrees and forty-five minutes west, one hundred and fifty-five links distant, and another willow thirteen inches in diameter bears north sixty-two degrees and fifteen minutes west, one hundred and eighty-two links distant;

5. Thence west through river bottom, at five chains and fifty links enters dense growth of low willows; at forty-one chains leaves same; at forty-five chains and fifty links the edge of east and left bank of Santa Ana River, course south five degrees west, the general course of the river is about south, thirty-five degrees west; at fifty-eight chains and seventy links, edge of west and right bank of river and enters bottom with thick growth of willows, elders and scattering sycamores; at seventy-three chains and forty-five links foot of steep bank of river bottom; course south twenty-eight degrees west; at seventy-four chains and sixty-six links top of bank and enters table-land sloping east; at one hundred chains crosses road from Roubideau to Agua Mansa, a New Mexican settlement; course north fifty degrees east; at one hundred and fifty-five chains and sixty links crosses road from Roubideau to the town of San Bernardino; course north thirty degrees east; at one hundred and ninety-one chains base

of steep rocky mountains; course north and south; at two hundred and thirty-three chains and sixty links summit of same and descends; at two hundred and forty-eight chains opposite base of mountain and enters valley of Portezuelo del Chemisal two hundred and seventy chains to charred stake and post in mound of stone marked 'J. 6' station, being also corner to sections four, five, eight and nine, township two south, range five west, from this station the Portezuelo del Chemisal bears north ten degrees east, about one hundred and twenty chains distant;

6. Thence the variation of the magnetic needle being fourteen degrees and thirty-two minutes east, south sixteen degrees west, down the valley of Portezuelo del Chemisal at eighty chains, leaves valley and enters table-land sloping east; at ninety chains and fifty links crosses road from Cucamonga to Roubideau course; north seventy-five degrees east; Louis Roubideau's house bears south sixty-nine degrees east; at one hundred and sixty-six chains house of Roubideau bears north sixty-five degrees and thirty minutes east; at two hundred and six chains and eighty links base of small conical hill two hundred and eleven chains to a charred stake and post marked 'J. 7' station on summit of hill;

7. Thence south sixteen degrees and thirty minutes west; and five chains and fifty links base of hill; at twenty-one chains and fifty links crosses road from Roubideau to Rancho El Rincon; course northeast and south sixty-five degrees west; at sixty-nine chains and forty links a charred stake and post in mound marked

'J. 8' witness station from which a black willow twenty inches in diameter bears north seventy-one degrees east, six hundred and sixty links distant at seventy chains and eighty links, edge of the right and north bank of the Santa Ana River; at seventy-one chains and ten links foot of bank and enters river; course north eighty-eight degrees west, seventy-four chains to station at junction of the sanjon or aqueduct with Santa Ana River;

8. Thence following the course of the old sanjon or aqueduct south seventy-one degrees and fifteen minutes east, one hundred and forty-one chains and ten links to post 'J. 2';

9. Thence leaving the line of the Jurupa Rancho confirmed to Louis Roubideau, the variation of the magnetic needle being fourteen degrees east, north eighty-six degrees and fifteen minutes west; at thirty-five chains and forty-eight links, road turns southwest at sixty-three chains and forty links a road; course south, seventy-five degrees west; at ninety-five chains and seventy-three links a dry gully; course north; at one hundred and thirty-three chains and twenty links a road runs south seventy-five degrees west; at one hundred and thirty-five chains and forty-six links intersects the boundary of the Rancho La Sierra, Sepulveda, confirmee, on course number five seventy-nine chains north of station 'L. S. V. S. 5'; thence through the said rancho; at one hundred and fifty-two chains and forty-eight links, a road runs south eighty degrees west; at one hundred and seventy-six chains and forty-eight links

a low hill bears north and south; at one hundred and eighty-one chains and eighty-eight links a road runs northwest; at one hundred and ninety-eight chains and ninety-eight links, a gulch; course southwest; at two hundred and one chains and ninety-eight links a gulch; course north; at two hundred and seventeen chains and twenty-two links intersects the line between ranges five and six west, at a redwood post in mound; ninety-nine chains and fifty-four links north of the corner to townships two and three south, and nineteen chains and fifty-four links north of the corner to sections twenty-five, thirty, thirty-one and thirty-six, two hundred and twenty-one chains and fifty-eight links to the line of the Reynolds survey at a post in mound marked J. X., eleven chains and eighty-three links south, fifty-seven degrees west, of station 'J. 10,' station from which a cottonwood thirty inches in diameter bears south eighty-four degrees and forty-five minutes west, eight hundred and twenty-nine links distant.

10. Thence along the line of the Rancho 'La Sierra,' Sepulveda, confirmee, south fifty-seven degrees west, at twelve chains and thirty links a ravine; course northwest forty-eight chains to post marked 'J. 11' Station;

11. Thence north seventy-four degrees west, seventy chains to post marked 'J. 12' Station;

12. Thence south seventy-six degrees and thirty minutes west, sixty-six chains to post marked 'J. 13' Station;

13. Thence north sixty-seven degrees, west, thirty-three chains to post marked 'J. 14' Station;

14. Thence south eighty-seven degrees and thirty minutes west, ninety-four chains to post marked 'J. 15' Station;

15. Thence south fifty-five degrees west, seventy-six chains to post marked 'J. 16' Station;

16. Thence south twenty-eight degrees west, eighteen chains to post marked 'J. 17' Station;

17. Thence south seventy-one degrees and thirty minutes west, at seventy-nine chains and twenty links intersects line between townships two and three south, range six west, at a stake in mound thirty-four chains east, of township, corner ninety-two chains to post marked 'J. 18' Station;

18. Thence south eighty-nine degrees west, at twenty-two chains and forty links a stake on line between ranges six and seven west, four chains and fifty-four links south of corner to townships two and three south, thirty-three chains to post marked 'J. 19' Station;

19. Thence south forty-seven degrees and fifteen minutes west, one hundred and eighty-five chains to stake marked 'J. 20 and S. L. 3,' on line of Rancho La Sierra, confirmed to Yorba, Station;

20. Thence along the line of the said rancho, north fifty-four degrees west, twenty-eight chains and fifty links to stake marked 'J. 21 and L. S. 2,' in south edge of river bottom bearing southwest, station;

21. Thence following down and crossing the River Santa Ana, south fifty-six degrees and fifteen minutes west, eighty-two chains and sixty-seven links to stake marked 'J. 22 L. S. 40 and E. R. VII,' in a mound in willow bottom north of River Station, on line of the

Rancho El Rincon, confirmed to Yorba from which post 'E. R. VIII and J. 23' of the Rancho El Rincon, bears north forty-two chains and forty links distant, from post 'E. R. VIII,' post E. R. IX and J. 24' bears west twenty chains distant;

22. Thence along east boundary of Rancho El Rincon, north, at forty-two chains and forty links, post marks 'J. 23 and E. R. VIII'; at seventy-eight chains and ninety links a stake at corner of sections three, four, nine and ten of township three south, range seven west, at eighty-two chains and sixty links crosses road; course east and west; at one hundred and fifty-eight chains and eighty-six links a post at corner of sections three, four, thirty-three and thirty-four, of townships two and three south, range seven west; at one hundred and sixty-six chains and forty-six links, a branch of Spring Creek, twelve links wide, runs west; this branch rises in a large spring about eight chains east; at one hundred and seventy-five chains and ninety-four links, a branch of Spring Creek ten links wide, runs south seventy degrees west, a spring bears northeast five chains distant, another spring bears north thirty degrees west, three chains and twenty links distant, the house of Mr. Sparks bears north forty-four degrees west, three chains and sixty links distant, enters Tule swamp or Cienega; at one hundred and seventy-seven chains and ninety links leaves Tule swamp; course east and west; at one hundred and eighty-four chains crosses road, bears north eighty-five degrees east; at one hundred and eighty-nine chains and eight links crosses road bears north sixty degrees east and south sixty degrees

west; at two hundred and eight chains the south side of a spring; at two hundred and nine chains a school-house bears west three chains distant; at two hundred and nine chains and seventy links crosses road, bears east and west; at two hundred and thirty-six chains and thirty-four links intersects south boundary of the Rancho Santa Ana del Chino six chains and forty links south, eighty-two degrees west, from post marked 'S. A. C. 3 and J. 28' at post in mound; at two hundred and fifty-six chains and eighty-five links crosses road; course east and west; at two hundred and sixty-one chains and forty links intersects east boundary of Rancho Santa Ana del Chino twenty-five chains, and twelve links north, fourteen chains and fifty-five links, a stake in mound on line; at four hundred and eight chains and thirteen links; arroyo two chains wide runs south twenty degrees west; at four hundred and seventeen chains and fifty-five links, a stake in mound on line at four hundred and forty-three chains and forty-eight links crosses road; course north twenty degrees east and southwest; at four hundred and ninety-seven chains and fifty-five links a stake in mound on line; at five hundred and seventy-seven chains and fifty-five links, a stake in mound on line; at six hundred and twenty-one chains and thirty-eight links, crosses road; course north seventy degrees west, and southeast, ascends gradually; at six hundred and forty-seven chains and fifty-five links a stake in mound on line; at six hundred and ninety-two chains and three links, crosses over low hills; at seven hundred and twenty-seven chains and fifty-five links, a stake in mound on line; at seven hundred

and fifty-two chains and three links, ascends mountain bearing southeast; at seven hundred and seventy-one chains and thirty-three links intersects line between ranges five and six west, sixty-five chains and thirty links south, of the corner of townships one and two south, at a stone on line; at seven hundred and ninety-five chains and three links summit of mountain spur sloping south; at eight hundred and thirty-one chains and three links summit of spur, slopes south; at eight hundred and fifty-one chains and thirty-three links a stone on line; at eight hundred and ninety-nine chains and three links a ravine at base of mountain; course south, twenty-five degrees east; at nine hundred and thirty-one chains and thirty-three links a stake in mound; at nine hundred and fifty chains and twenty-eight links crosses road; course northeast and southwest; at nine hundred and fifty-one chains and three links a stake in mound; at nine hundred and seventy-eight chains and three links ascends mountain bearing northeast and south; at nine hundred and ninety-eight chains and three links a mound on summit of very rocky mountain bearing north and southeast; at ten hundred and eleven chains and thirty-three links a stone on steep mountain slopes to northeast; at ten hundred and forty-three chains and three links base of mountain bears northwest and southeast, enters rolling plain with scattering chaparral at ten hundred and forty-four chains and forty-three links crosses road; course northwest and southeast; at ten hundred and ninety-one chains and thirty-three links a stake in mound; at eleven hundred and seventy-one chains and

thirty-three links, a stake in mound; at twelve hundred and two chains and forty-three links crosses road; course northwest and southeast; at twelve hundred and thirty-six chains and sixty-eight links a fence; course north and south; at twelve hundred and fifty-one chains and thirty-three links a stake in mound; at twelve hundred and eighty-four degrees thirty minutes west, from post 'S. A. C. 3 and J. 28' two hundred and ninety-eight chains and eighty-four links to a post marked 'J. 25' intersecting the north boundary of Jurupa Rancho fifty-seven chains and ninety-seven links north, sixty-eight degrees and fifty-seven minutes east, from the post marked 'J. XXIV' Station;

23. Thence the variation of the magnetic needle being thirteen degrees and fifty-six minutes east, north sixty-eight degrees and fifty-seven minutes east, at three links a white sand hill; at ten chains and three links crosses road, course northeast and southwest; at twelve chains and twenty-three links crosses road; course northeast and southwest; at fifty-five chains and seventy-one links intersects line between sections twenty-two and twenty-seven on the east boundary of the rancho, 'Addition to Santa Ana del Chino thirty-three chains and fifteen links east, of the corner to fractional sections twenty-two and twenty-seven at a post in mound corner of fractional sections twenty-two and twenty-seven, township two south, range seven west; at seventy-seven chains and forty-eight links crosses road; course northeast and southwest; at eighty-six chains and fifteen links intersects line between sections

twenty-two and twenty-three, twenty-nine chains and forty links south, of the one-quarter section corner between sections twenty-two and twenty-three, at a post in mound corner of fractional sections twenty-two and twenty-three, township two south, range seven west; at one hundred and sixty-three chains and three links, leaves level land for rolling plain; at one hundred and seventy-one chains and eighty-five links intersects line between sections twenty-three and twenty-four, thirty-eight chains and seventy links south, of corner to sections thirteen, fourteen, twenty-three and twenty-four, at a post in mound, corner to fractional sections twenty-three and twenty-four, township two south, range seven west; at one hundred and seventy-five chains and three links a white sand hill, claimed by the settlers to be the northwest corner of the Jurupa Rancho, bears north twenty-four degrees west, about four chains distant, the ruins of the old Bandini house alleged by the same parties as the southwest corner of the rancho bears about south twenty-four degrees west, on the west bank of the Santa Ana River; at two hundred and two chains and seventy-three links crosses road, course north twenty-one degrees west and south twenty-one degrees east; leaves Chaparral; at two hundred and fifty-seven chains and fifty-five links, intersects the line between ranges six and seven west, seven chains and ninety links south, of the corner to sections thirteen, eighteen, nineteen and twenty-four at a charred stake in mound, corner to fractional sections nineteen and twenty-four, township two south, between ranges

six and seven west; at three hundred and thirty-seven chains and fifty-seven links intersects line between ranges four and five west, one chain and fifteen links south, of the one-quarter section corner between sections twenty-five and thirty, township one south, a witness post in a mound twenty links north of the point of intersection; the point of intersection falling in a road running east and northwest; at twelve hundred and eighty-eight chains and ninety-three links crosses road, course north and south, and leaves chaparral; at thirteen hundred and two chains and seventy-seven links a fence, course north and south, enters field; at thirteen hundred and twenty-seven chains and ninety-five links crosses road, course east and west, and leaves field thirteen hundred and forty-one chains and twenty-nine links to post marked 'J. XXVI' on the hill call Tacamalcay, Station;

24. Thence, the variation of the magnetic needle being fourteen degrees east, south, twenty degrees east; at five chains and ten links a fence, course east and west; at seventeen chains a house on line; at twenty-four chains and eighty links crosses road from Colton to Riverside, course southwest; at sixty-four chains and eighty-five links a fence, course northeast; at sixty-eight chains and ten links, enters washed bed of Santa Ana River, course southwest; at seventy-two chains and fifty links enters river, course southwest; at seventy-six chains and twenty links, leaves river, course southwest; at one hundred and two chains leaves washed bottom, course southwest; at one hundred and eight

chains station on survey of Rancho San Bernardino, at base of steep bank one hundred and eighteen chains and eighty links to post marked 'J. XXVII' at intersection of line agreed on as the east boundary of the Rancho Jurupa, Station;

25. Thence south twenty-nine degrees west; at twenty-seven chains intersects the line between townships one and two south, range four west, two chains and thirty-seven links, east of corner of sections five, six, thirty-one and thirty-two; at post in mound and from which section corner, the corner to townships one and two south, ranges four and five west, bears west seventy-nine chains and six links distant; at thirty-two chains and fifty-six links intersects the line between sections five and six, at a post four chains and eighty-six links south of corner to sections five, six, thirty-one and thirty-two at seventy-nine chains and twenty links crosses road from Colton to Riverside, course north and south; at ninety-five chains and twenty-five links crosses ravine, course west; at one hundred and fifteen chains the east slope of the low rocky hill; at one hundred and seventeen chains and sixty links, intersects line between sections six and seven, at post in mound, one chain and eighty-nine links west of the one-quarter section corner; at one hundred and sixty-six chains a bend in the upper ditch; at one hundred and ninety-three chains upper ditch, twenty-five links wide runs south fifteen degrees east; at one hundred and ninety-four chains and ninety-seven links intersects the line between ranges four and five west, at a post in mound, thirteen chains and twenty links north

of corner to sections seven, twelve, thirteen and eighteen; at two hundred and six chains crosses ravine, course west; at two hundred and ninety chains Russell's house bears north sixty-one degrees west, eighty links distant; at two hundred and ninety-one chains crosses road, course sixty-one degrees west; at three hundred and twenty chains and five links upper ditch twenty-five links wide runs south, eighty-five degrees west; at three hundred and forty-three chains and forty links crosses road to Colton, course north fifty degrees east; at three hundred and forty-four chains a ditch comes from north, and runs on right of line, this point is the southeast boundary of the town of Riverside; at three hundred and seventy-four chains and thirty links, crosses road, course south sixty-one degrees east; at three hundred and eighty-seven chains and thirty links a ditch turns south; at three hundred and ninety-two chains a ravine, course west; at three hundred and ninety-three chains and seventeen links upper ditch, course north seventy degrees west a road from north, course south twenty-nine degrees west; at four hundred and forty-eight chains road turns west; at four hundred and fifty chains and fifty links, Hall's house bears south sixty links distant—descends; at four hundred and fifty-five chains the Cañada del Tequisquita, course north eighty degrees west; at four hundred and sixty-two chains the top of south bank of cañada, a flume from north thirteen degrees east, and a ditch runs north eighty-five degrees west; at four hundred and eighty-one chains and fifty links the east base of 'Pachappa'; at four hundred

and ninety-one chains and seventy-five links a rock spur running southeast four hundred and ninety-three chains to post 'J. 1' the place of beginning, containing thirty-two thousand two hundred and fifty-nine and sixteen hundredths (32,259 16/100) acres, of which area seven and ninety-nine hundredths (7 99/100) acres are included in the Rancho Santa Ana del Chino, and forty-nine and three hundredths (49 3/100) acres in the Rancho 'La Sierra' (Sepulveda, confirmee), and designated on the official plat of public surveys as lot number thirty-nine of township one south, range four west, lot number thirty-seven of township one south, range five west; lot number thirty-seven of township two south, range four west; lot number thirty-seven of township two south, range five west; lot number 37 of township 2 south, range six west; lot number thirty-nine, of township 2 south, range seven west; lot number 39 of township 3 south, range six west; and lot number thirty-eight of township 3 north, range seven west; all of the San Bernardino base and meridian.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, in the city of San Francisco, this twenty-eighth day of December A. D., one thousand eight hundred and seventy-eight.

THEO. WAGNER,

U. S. Surveyor General for California."

Now know ye, that the United States of America, in consideration of the premises and pursuant to the provisions of the act of Congress aforesaid of third March Anno Domini, one thousand eight hundred and fifty-

one, and the legislation supplemental thereto, have given and granted and by these presents do give and grant unto the said Abel Stearns, his heirs and assigns, the tract of land embraced and described in the foregoing survey, but with the stipulation that in virtue of the fifteen section of the said act, neither the confirmation of this said claim, nor this patent, shall affect the interests of third persons.

To have and to hold the said tract of land with the appurtenances unto the said Abel Stearns, his heirs and assigns forever, with the stipulation aforesaid.

In testimony whereof, I, Rutherford B. Hayes, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, this twenty-third day of May, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States, the one hundred and third.

By the President:

R. B. HAYES,

[L. S.] By WM. H. CROOK,

Secretary.

S. W. CLARK,

Recorder of the General Land Office.

[Endorsed]: No. 979. United States of America vs. The Southern Pacific Railroad Company et al. Ex. "K." Filed Apr. 1, 1902. Plaintiff's Exhibit 11. A. M. Cates, Special Examiner. Filed May 24, 1902. Wm. M. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.

THE UNITED STATES,
Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, and Others,
Defendants.
No. 979.

Testimony.

Testimony taken on behalf of certain defendants at the office of Joseph H. Call, Esq., rooms 308 and 309 Currier Building, in the city of Los Angeles, California, before A. M. Cates, Special Examiner, and stenographer, by consent of parties on June 21, 1902.

Present: Joseph H. Call, Esq., Special Assistant United States Attorney, and J. A. Graves, Esq., Attorney for Defendant, I. N. Van Nuys.

Thereupon the proceedings were had:

(By Mr. CALL and Mr. GRAVES.)

It is stipulated at this time that testimony oral and documentary be offered on the part of I. N. Van Nuys, one of the defendants, without notice given, with the same effect, as if notice had been given.

It is further stipulated that the testimony taken on the first day of April, 1902, and the stipulations then entered into shall be considered as applying to and offered for this defendant.

Mr. GRAVES.--We will next offer the deed from Southern Pacific Railroad Company to A. G. Patton, dated February 1, 1889, recorded in the office of the county recorder of San Bernardino County, California, in book 51, of Deeds, page 110, for all of section nine (9), township two (2) south, range six (6), west, San Bernardino base and meridian, and expressing a consideration of $1920.00.

Mr. CALL.—It is stipulated that all valid objections to the testimony are deemed taken.

Mr. GRAVES.—We offer that deed in evidence.

(Deed filed by the examiner and marked Defendants' Exhibit No. 1.)

Mr. GRAVES.—Now we offer deed from Archibald G. Patton to I. N. Van Nuys, dated July 24, 1899, and recorded in book 83, of Deeds, page 58, in the office of the recorder of Riverside County, California, for other property, and section nine (9), township two (2), south, range six (6) west; S. B. M.

(Deed filed by the examiner and marked Defendants' Exhibit No. 2.)

Mr. CALL.—It is stipulated that the special examiner may make copies of all the original documents offered by defendants upon this hearing, upon which the originals may be withdrawn and such copies duly certified by the examiner shall stand in lieu of such originals.

I. N. VAN NUYS, being first duly sworn on behalf of defendants, testified as follows, in answer to the following interrogatories by Mr. Graves:

Q. No. 1. You are one of the defendants, Mr. Van Nuys, in this action? A. Yes, sir.

Q. No. 2. Did you know A. G. Patton?

A. Yes, sir.

Q. No. 3. Do you know of the time he purchased the land from the Southern Pacific Railroad Company, just offered? A. Yes, sir.

Q. No. 4. Had you any business relations with him up to that time? A. Yes, sir.

Q. No. 5. What were they?

A. Well, I was loaning him the money to purchase it.

Q. No. 6. He had been working for you, had he?

A. He had been a tenant on the San Fernando ranch for a number of years and wanted to go off for himself, and went up to this place, and he had a little money of his own, and I was loaning the balance. At this time I loaned him all of it, and took his note for it. He had some other land.

Mr. CALL.—Q. No. 7. Were you personally acquainted with the facts concerning the purchase?

A. Of the purchase?

Q. No. 8. Yes. A. Oh, yes.

Mr. GRAVES.—Q. No. 9. The consideration recited in the deed is $1920.00. Who paid that money?

A. I did.

(Testimony of I. N. Van Nuys.)

Q. No. 10. You paid it as his agent or for him, and whom did you pay it to?

A. It went to the Southern Pacific Company. My impression is I got exchange and gave it to Cabot.

Q. No. 11. Cabot was their agent at the time here?

A. Yes, their agent. It might be I gave my check to the Southern Pacific Company for the money.

Mr. CALL.—Q. No. 12. You mean the Southern Pacific Railroad Company, not the Southern Pacific Company? There are two corporations, you know.

A. The party that made this deed. Yes, the Southern Pacific Railroad Company.

Mr. GRAVES.—Q. No. 13. Now, Mr. Van Nuys, do you know what Patton did with reference to this land after his purchase of it, as to occupation, cultivation, etc.?

A. He went on and occupied it. He put out an orchard and vineyard on one corner of it. As I think it lies it would be—

Q. No. 14. Have you that map of yours?

A. Yes.

Q. No. 15. You had a separate map. There it is.

A. My impression is it is in this corner (indicating).

Q. No. 16. In the southwest quarter of section nine?

A. Yes.

Q. No. 17. How many acres of orchard did he plant?

A. I think orchard and vineyard in the neighborhood of forty acres.

(Testimony of I. N. Van Nuys.)

Q. No. 18. Did he cultivate that right along?

A. It is there now. There is a nice orchard there of apricots and peaches. The orchard is probably thirty acres of trees and the balance in vines; something like that.

Q. No. 19. Did he fence those lands?

A. The orchard part is fenced.

Q. No. 20. Then up to the time you purchased what did he do with the balance of the land?

A. Farming all the time.

Q. No. 21. The date of the deed to you is July 24, 1899. The consideration expressed is ten dollars. The revenue stamps would indicate a consideration of fifteen thousand dollars. What did you consider this land worth?

A. I considered the true value of the land at that time fifteen thousand dollars; that is the reason I put on that—he owned me more than that.

Mr. CALL.—Q. No. 22. What did you allow in the purchase of the land as the consideration of this particular part of it?

A. It was all in with the other land. I do not know—I would have to make a calculation to see what that proportion would come to. I considered that of the same value as the balance. I would have considered it, if I had said anything, a little more, because that had the orchard on, but he had his well and what building improvements he had, on the other lands.

(Testimony of I. N. Van Nuys.)

Mr. CALL and Mr. GRAVES.—It is agreed that the total acreage of the land described in the deed of Patton to defendant Van Nuys, dated July 24, 1899, is 1270 acres, of which 384.78 acres is involved in this suit.

Mr. GRAVES.—Q. No. 23. Then you paid for the land involved in this action the average price of all the lands described in that deed?

A. Yes, that is the way I would consider it.

Q. No. 24. Which would be about $11.50 per acre?

A. Yes, sir.

Q. No. 25. At the time you took this land, Mr. Van Nuys, or purchased it, did you have any examination of the title made? A. Yes, sir.

Q. No. 26. You had the examination made?

A. Yes, sir.

Q. No. 27. What did it result in?

A. They passed the title as perfect. I turned it over to the abstract company.

Q. No. 28. And they brought you a certificate?

A. Yes, sir, if they found a title and everything all clear to make out a deed. I was sick in bed at the time; I turned it over to my cashier and he attended to it.

Q. No. 29. Had you any knowledge at the time, of any claim to this land by the United States Government? A. No, sir.

Q. No. 30. You knew it was patented railroad land?

A. Yes, sir.

(Testimony of I. N. Van Nuys.)

Q. No. 31. Did you buy it in good faith?

A. Yes, sir.

Q. No. 32. What have you done with it since?

A. Have been having it farmed.

Q. No. 33. Are you now in possession?

A. Yes, sir.

Q. No. 34. And have been ever since you purchased it? A. Yes, sir.

Q. No. 35. Have the taxes been paid ever since the purchase from the railroad company?

A. Yes, sir, I look after that myself.

Mr. CALL.—Will you waive the signature, Mr. Graves?

Mr. GRAVES.—Yes, sir, I waive the signature.

At this time the hearing was adjourned by the examiner until two o'clock of the same day.

Defendant Van Nuys' Exhibit No. 1.

(Filed before me June 21, 1902—A. M. Cates, Special Examiner.)

Deed No. 2898.

To All to Whom These Presents Shall Come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, trustees, of all the lands of the said Southern Pacific Railroad Company, lying in the State of California,

which remained unsold on the first day of April, A. D. 1875, send greeting:

Whereas, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand Bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G: Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; Series G to consist of six thousand bonds for one thousand dollaers each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April first, eighteen hundred and seventy-

five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct: All of said bonds aggregating the sum of forty-six millions of dollars;

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said trustees; and that when such sales had been made, and the purchase money fully paid, the said company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or encumbrance for or on account of said Bonds, or any other debt or obligation of the said Railroad Company;

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3d day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing of the city of San Francisco and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the

Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing, did formally accept the position of trustee under said deed of trust;

And whereas, said deed of trust further provided, that, for the sake of convenience in making said conveyances, the said trustees should have power to act, by attorney, duly nominated and appointed by them, jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person;

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the city and county of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead to make, execute and deliver all conveyances required of them, as aforesaid;

And whereas, the said Railroad Company has sold the lands hereinafter described, pursuant to the foregoing conditions, to A. G. Patton, of the county of San Bernardino, State of California, for the sum of nineteen hundred and twenty ($1920.00) 00/000 dollars, which sum

has been fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid;

Now, therefore, in consideration of the premises, and the said sum of nineteen hundred and twenty ($1920.00) 00/100 dollars the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and convey to the said A. G. Patton and to his heirs and assigns, the following described tract of land situate, lying and being in the county of San Bernardino, and State of California, to wit:

All of section No. nine (9), in township two (2) south of range six (6) west, San Bernardino base and meridian, containing six hundred and forty (640.00) 00/100 acres, according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging: Excepting and reserving, all liability on the part of the Southern Pacific Railroad Company for taxes since November 12th, 1883, the grantee herein having heretofore agreed with said company to pay the same, and also reserving all claim of the United States to said tract as mineral land.

E. B. R.

To have and to hold, the aforesaid premises, to the said A. G. Patton, his heirs and assigns, to his and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company, has caused these presents to be signed by its president and secretary, and sealed with its cor-

porate seal; and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden, have subscribed their names and affixed their seals, this first (1st) day of February, A. D. 1889.

[Seal] CHAS. F. CROCKER,
Pres. S. P. R. R. Co.

J. L. WILCUTT,
Sec. S. P. R. R. Co.

D. O. MILLS, [Seal]
GERRIT L. LANSING, [Seal]
Trustees.

By JEROME MADDEN,
Their Joint Attorney in Fact.

State of California,
City and County of San Francisco. } ss.

On this first (1st) day of February, in the year one thousand eight hundred and eighty-nine, before me, E. B. Ryan, a notary public in and for said city and county of San Francisco, State of California, personally appeared Charles F. Crocker, known to me to be the President, and J. L. Wilcutt, known to me to be the Secretary, of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also, on this, the day aforesaid, before me, the notary public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney in fact of D. O. Mills and Gerrit L. Lansing,

and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney in fact.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, State of California, on the day and year above written.

[Seal] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

Deed No. 2898. Southern Pacific Railroad Co. D. O. Mills and Gerrit L. Lansing, Trustees, to A. G. Patton, Box 201, Riverside. Deed. Dated February 1st, 1889.

Recorded at the request of A. G. Patton, Riverside, Feb. 18th, 1889, at 40 min. past 11 A. M. in Book 51 of Deeds, page 110 Records San Bernardino County.

A. S. DAVIDSON,
County Recorder.

By Lezan Allen,
Deputy Recorder.

$3.50 paid.

I hereby certify that the foregoing deed is a true copy of an original deed filed in evidence before me on the 21st day of June, 1902.

A. M. CATES,
Special Examiner and Stenographer.

Defendant Van Nuys' Exhibit No. 2.

(Filed before me June 21, 1902.—A. M. Cates, Special Examiner.)

[United States Internal Revenue Stamps to the amount of $15.00 are attached and canceled.]

This indenture, made the twenty-fourth day of July, ine the year of our Lord one thousand eight hundred and ninety-nine, between Archibald G. Patton (widower) of San Bernardino county, the party of the first part, and I. N. Van Nuys, of Los Angeles County, witnesseth:

That the said party of the first part, for and in consideration of the sum of ten (10) dollars, gold coin of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain and sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain real property situate in the county of Riverside, State of California, and particularly described as follows:

1st. The northwest quarter (1/4) of section ten (10), in township two (2) south, range six (6) west, S. B. M.

2d. Lots numbered five (5), six (6), seven (7), eight (8) and nine (9) of section ten (10); also the south half (1/2) of section three (3); and all of section nine (9); all in township two (2) south, range six (6) west, S. B. M.

Together with all and singular the tenements hereditaments and appurtenances thereunto belonging or in any wise appertaining and the reversion and rever-

sions, remainder and remainders, rents, issues and profits thereof.

To have and to hold all and singular, the said premises, together with the appurtenances, unto the said party of the second part and to his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year in this indenture first above written.

Signed, sealed and delivered in the presence of

ARCHIBALD G. PATTON. [Seal]

State of California, }
County of Los Angeles. } ss.

On this 24th day of July, in the year of our Lord one thousand eight hundred and ninety-nine, before me, A. F. Morlan, a notary public in and for the said county of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Archibald G. Patton, known to me to be the person described in and whose name is subscribed to the foregoing instrument and he acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] A. F. MORLAN,
Notary Public in and for the County of Los Angeles, State of California.

Deed. Los Angeles County. Archibald G. Patton to I. N. Van Nuys. Dated July 24, 1899. Title Insurance and Trust Company. Cor. Franklin and New High Streets, Los Angeles, Cal. Order No. ——. When recorded please mail this instrument to

Received for record, Jul. 26, 1899, at 30 min. past 3 o'clock P. M. at request of Title Insurance and Trust Co. copied in Book No. 83 of Deeds, page 58, et seq., Records of Riverside County California.

E. H. GRUNELL,
Recorder.

By ————,
Deputy Recorder.

Fees, $1.00.

c/o Franklin and New High, Los Angeles.

I hereby certify that the foregoing deed is a true copy of an original deed filed in evidence before me on the 21st day of June, 1902.

A. M. CATES,
Special Examiner and Stenographer.

June 21, 1902, two o'clock P. M.

At this time the hearing was resumed at the same place.

Present: Joseph H. Call, Esq., Special Assistant United States Attorney, and A. B. McCutchen, Esq., attorney for defendant Frank Walker.

Mr. CALL.—It will be understood that this testimony is subject to any valid objection.

Mr. McCUTCHEN.—Yes, sir.

Mr. McCUTCHEN.—We want to introduce first a deed from the Southern Pacific Railroad Company by D. O. Mills and Gerrit L. Lansing trustees, to Frank Walker, dated February 28, 1895.M

(Deed filed by examiner and marked Defendant Walker's Exhibit No. 1.")

FRANK WALKER, first being duly sworn on behalf of defendants, testified as follows, in answer to the following interrogatories by Mr. McCutchen:

Q. No. 1. Mr. Walker, you are the defendant sued as Frank Walker in this action? A. Yes, sir.

Q. No. 2. You claim to own the north half (N. 1/2) of the north east quarter (N. E. 1/4) of section thirty-one (31) in township one (1) south of range five (5) west, S. B. M., do you not? A. I do.

Q. No. 3. Will you state how and when you acquired that land?

A. I got a contract from the Southern Pacific Railroad Company in 1891 and paid twenty per cent of the purchase price which was $96.00, with an agreement to give me a deed so soon as they got a patent to the land, and on the date of this deed February 28, 1895, I paid them the balance of the purchase money and they gave me this deed to the land.

Q. No. 4. Have you paid taxes on this land since you got the deed to it?

A. I paid the taxes every year since.

Q. No. 5. Do you remember the first year that you paid the taxes?

(Testimony of Frank Walker.)

A. I think it was in 1896. The first receipt I found is 1897. I have paid the taxes ever since I have had the land. That is the first receipt that I found; the others I cannot find.

Q. No. 6. When did you ever have any knowledge or notice, if at all, that there was any question made by the United States, or any other person, respecting the title or the validity of the title to this land that you bought.

A. Never had any notice of any kind until I got this summons in this case.

A. No. 7. Had you any knowledge or notice at the time you paid the balance of the purchase money and got your deed that there was any question respecting the validity of the title to the land? A. I had not.

Mr. CALL.—Will you waive the signature, Mr. McCutchen?

Mr. McCUTCHEN.—Yes, sir.

Hearing adjourned by consent to be resumed upon request of either party upon reasonable notice.

Defendant Walker's Exhibit No. 1.

Deed No. 10683.

To All to Who These Presents Shall Come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills, and Gerrit L. Lansing, trustees, of all the lands of the said Southern Pacific

Railroad Company, lying in the State of California which remain unsold on the first day of April, A. D. 1875, send greeting:

Whereas, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Copany conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G; Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B to F both inclusive, to consist of five thousand bond each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; Series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April first, eighteen

hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct: All of said bonds aggregating the sum of forty-six millions of dollars;

And whereas said deed of trust among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said trustees; and that when such sales had been made, and the purchase money fully paid, the said company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or encumbrance for or on account of said bonds, or any other debt or obligation of the said Railroad Company;

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3d day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance did, pursuant to the terms of his trust, nominate Gerrit L. Lansing of the city of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board

of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrittt L. Lansing did formally accept the position of trustee under said deed of trust;

And whereas, said deed of trust further provided, that for the sake of convenience in making said conveyances, the said trustees should have power to act by attorney, duly nominated and appointed by them jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their name by such attorney should have the same force and effect as if made by them in person.

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney; duly acknowledged and recorded as aforesaid, Jerome Madden, of the city and county of San Fancisco, and State of California, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them, as aforesaid;

And whereas, the said Railroad Company contracted to sell the lands hereinafter described, pursuant to the foregoing conditions, to Frank Walker of the county of Los Angeles, State of California, for the sum of four hundred and eighty ($480.00) dollars, which sum has been

fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid.

Now, therefore, in consideration of the premises, and the said sum of four hundred and eighty ($480.00) dollars, the receipt whereof is hereby acknowledged, the said Southen Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and convey to the said Frank Walker and to his heirs and assigns, the following described tract of land situate, lying and being in the county of San Bernardino, and State of California, to wit: The north half of the northeast quarter (N. 1/2 of N. E. 1/4) of section No. thirty-one (31) in township one (1) south, of range five (5) west, San Bernardino base and meridian, containing eighty (80) acres, according to the United States Surveys together with all the privileges and appurtenances thereunto appertaining and belonging: Excepting and reserving all liability on the part of the Southern Pacific Railroad Company for taxes thereon since January 9th, 1891, the said purchaser having heretofore agreed with said company to pay the same, and also reserving all claim of the United States to said tract as mineral lands.

To have and to hold, the aforesaid premises, to the said Frank Walker, his heirs and assigns, to his and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused its name to be signed to these presents by its vice-president and secretary and its Corporate Seal to be hereunto affixed; and the said D. O.

Mills and Gerrit L. Lansing, Trustees, by their said attorney, Jerome Madden, have hereunto subscribed their names and affixed their seals, this twenty-eight day of February, A. D. 1895.

SOUTHERN PACIFIC RAILROAD COMPANY.
By H. E. HUNTINGTON,
Its Vice-President.

[Seal] By J. L. WILLCUTT,
Its Secretary.

D. O. MILLS, [Seal]
GERRIT L. LANSING, [Seal]
Trustees.

By JEROME MADDEN,
Their Joint Attorney in Fact.

State of California,
City and County of San Francisco. } ss.

On this twenty-eight day of February in the year one thousand eight hundred and ninety-five (1895), before me, E. B. Ryan, a notary public in and for said city and county of San Francisco, State of California, personally appeared H. E. Huntington, known to me to be the vice-president and J. L. Willcutt, known to me to be the secretary, of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also, on this the day aforesaid, before me, the notary public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney in fact of D. O. Mills and

Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney in fact.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, State of California, on the day and year above written.

[Seal] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, and State of California.

[Endorsed]: Deed No. 10683. Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, Trustees, to Frank Walker. Deed. Dated February 28th, 1895. Frank Walker, 324 California St., Los Angeles. Southern Pacific R. R. Co. to Frank Walker. Feb. 28, 1895. Recorded at request of Frank Walker, Apr. 12, 1897, at 10 min. past 1 P. M. in Book 51 of Deeds, page 285. Records San Bernardino County. J. W. T. Diss, County Recorder. By E. R. Fussell, Deputy Recorder. Folios, 16. Fee, $2.00 Pd. 324 California St., L. A. Defendant Walker's Exhibit 1. Filed before me June 21, 1902. A. M. Cates, Special Examiner.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California Southern Division.

THE UNITED STATES,
Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY AND OTHERS,
Defendants.
No. 979.

Testimony.

Testimony taken on behalf of certain defendants at the office of Joseph H. Hall, Esq., rooms 308 and 309 Currier Building in the City of Los Angeles, California, before A. M. Cates, special examiner and stenograhper, by consent of parties on July 5, 1902.

Present: Joseph H. Call, Esq., Special Assistant United States Attorney, and Russ Avery, Esq., attorney for defendants J. P. Kyler, William H. Davis, Charles H. Colwell and Russ Avery..

Thereupon the following proceedings were had:

(By Mr. CALL and Mr. AVERY.)

It is stipulated that all testimony offered on this hearing shall be subject to all valid objections.

It is further stipulated that the special examiner may make copies of all the original documents offered by defendants upon this hearing upon which the originals may be withdrawn and such copies duly certified by the examiner shall stand in lieu of such originals.

(By Mr. AVERY.)

I offer in evidence a certified copy of a deed from the Southern Pacific Railroad Company to H. S. Button, dated July 8, 1896, describing lot four (4), in section thirty-three (33), township one (1) south, range five (5) west, S. B. M., and other land, the consideration recited being $908.90 conveying 90 acres altogether, being at the rate of $10.00 per acre.

(Deed filed by the examiner and marked Defendant Kyler's Exhibit No. 1.)

(By Mr. AVERY.)

Also secondly, a deed from H. S. Button to J. P. Kyler, dated June 27, 1896, conveying lot four (4) above, consideration $300.00 being at the rate of about $28.00 per acre.

(Deed filed by the examiner and marked Defendant Kyler's Exhibit No. 2.)

(By Mr. AVERY.)

Thirdly, I introduce in evidence an original deed from the Southern Pacific Railroad Company number 10,749 to J. P. Kyler, dated May 30, 1896, conveying lot three (3) in section thirty-three (33) of township one (1) south, range five (5) west, S. B. M., containing 41.52 acres, the consideration recited being $415.20, being at the rate of $10 per acre.

(Deed filed by the examiner and marked Defendant Kyler's Exhibit No. 3.)

(By Mr. CALL and Mr. AVERY.)

It is stipulated that the above named defendant Kyler has paid all the state, county and other taxes upon the

said land, to wit: Lots 3 and 4 in section 33, township 1 south, range 5 west, S. B. M., since 1895.

(By Mr. AVERY.)

I will introduce a certified copy of deed numbered 10,762 from the Southern Pacific Railroad Company to S. H. Button, dated July 8, 1896, conveying the southeast quarter of the northeast quarter of section 33, in township 1 south, range 5 west, S. B. M., and other land, aggregating 90.89 acres, the consideration recited being $908.90 or at the rate of $10.00 per acre.

(Deed filed by examiner and marked Defendant Davis' Exhibit No. 1.)

(By Mr. AVERY.)

Secondly, an original deed from H. S. Button to William H. Davis conveying the southeast quarter of the northeast quarter of section 33, township 1 south, range 5 west, S. B. M., the date of the deed being the 29th day of December, 1899, the consideration being recited as $10.00.

(Deed filed by the examiner and marked Defendant Davis' Exhibit No. 2.)

(By Mr. CALL and Mr. AVERY.)

It is stipulated that the above named defendant William H. Davis and his predecessor in interest, H. S. Button, have paid all state, county and other taxes that have been levied or assessed upon said land above described since July 8, 1896.

(By Mr. AVERY.)

I introduce in evidence a certified copy of deed num-

bered 10,123 from the Southern Pacific Railroad Company, dated September 25, 1895, to Mrs. Kate Bryant McVay, conveying lot 3 and 4 in the southwest quarter of section 17, township 2 south, range 6 west, S. B. M., and other land, consideration recited $1163.46; total acreage conveyed, 193.91, being at the rate of $6.00 per acre.

(Deed filed by examiner and marked Defendant Colwell's Exhibit No. 1.)

Secondly, an original deed from Mrs. Kate Bryant McVay and W. E. McVay her husband, to Charles H. Colwell, dated March 24, 1899, conveying the west 20 acres of lots numbered 3 and 4 in the southwest quarter of section 17, township 2 south, range 6 west, S. B. M., the consideration recited is $10.00.

(Deed filed by examiner and marked Defendant Colwell's Exhibit No. 2.)

(By Mr. AVERY.)

Thirdly, deed from Charles H. Colwell and Carrie E. Colwell his wife to Russ Avery, dated March 22, 1899, conveying the east 10 acres of the west 20 acres of lots 3 and 4 in the southwest quarter of section 17, township 2 south, range 6 west, S. B. M., being 10 acres, consideration recited being $100.00.

(Deed filed by the examiner and marked Defendant Avery's Exhibit No. 1.)

(By Mr. CALL and Mr. AVERY.)

It is stipulated that Charles H. Colwell and Russ Avery and their predecessors in interest have paid all

the taxes, state, county and other taxes, since the 25th day of September, 1895, upon the west 20 acres of lots 3 and 4 in the southwest quarter of section 17, township 2 south, range 6 west, S. B. M.

Hearing adjourned by consent to be resumed upon request of either party upon reasonable notice.

Defendant Kyler's Exhibit No. 1.

Deed No. 10762.

This deed, made July 8th, 1896, between the Southern Pacific Railroad Company, a corporation, D. O. Mills and Homer S. King, trustees, under the trust deed hereinafter set forth, the parties of the first part, and H. S. Button the party of the second part, witnesseth:

That whereas, on April 1st, 1875, the said Southern Pacific Railroad Company, by deed of trust bearing date, conveyed to D. O. Mills and Lloyd Tevis, their successors and assigns, all lands granted by the United States to aid in the construction of the said company's railroads, in trust to secure payment of certain bonds particularly set forth in the trust deed, of which the lands hereinafter described are a part;

And whereas, the said trust deed provided that the said company may sell the lands in it conveyed as opportunity occurred, upon terms agreed upon by the said company and trustees; and that when any tract or parcel of said lands shall have been sold and the purchase price fully paid, it shall be conveyed in fee simple by the said company and trustees, to the purchaser thereof; and that such conveyance shall release the land

so conveyed from all lien or encumbrance of the said trust deed, absolutely and forever;

And whereas, the said trust deed further provided, that in case a vacancy should occur in the number of said trustees, such vacancy should be filled by the nomination of the remaining trustee, subject to the approval of the board of directors of the said company; and that the person so nominated and approved should immediately upon his acceptance of such appointment, become a trustee under such trust deed, vested with the same estates, powers, rights and interests, and charged with the same duties and responsibilities, as if he had been one of the original trustees named in and who executed the said trust deed, and;

Whereas, on March 24th, 1883, Lloyd Tevis, one of the trustees aforesaid, resigned his trust under the said trust deed; and on April 3d, 1883, the said D. O. Mills, as remaining trustee, nominated Gerrit L. Lansing to fill the vacancy created by the resignation of the said Lloyd Tevis; and on April 17th, 1883, the board of directors of the said company approved the nomination of the said Gerrit L. Lansing; and on April 18th, 1883, the said Gerrit L. Lansing duly accepted the said appointment; and

Whereas, on February 4th, 1896, the said Gerrit L. Lansing died and on March 14th, 1896, the said D. O. Mills, as remaining trustee, nominated Homer S. King to fill the vacancy created by the death of the said Gerrit L. Lansing; and on March 18th, 1896, the board of directors of the said company approved the nomina-

tion of the said Homer S. King, and on March 21st, 1896, the said Homer S. King duly accepted the said appointment; and

Whereas, the said trust deed further provided that the trustee under it shall have the power and authority to act by attorney to be appointed by them, in making the conveyances in said trust deed provided for; such appointment to be made by letter of attorney duly acknowledged, and to be recorded in each county within which any of the lands of the said trust deed are situated; and all deeds made in the names of such trustees, by their attorney appointed as aforesaid, shall have the same force and effect as if made by the said trustees in person; and

Whereas, on March 28th, 1896, the said D. O. Mills and Homer S. King, trustees as aforesaid, by letter of attorney, duly acknowledged and recorded as in the said deed of trust provided, appointed Jerome Madden their true and lawful attorney in their name, place and stead, to make, execute and deliver all conveyances required of them under and pursuant to the terms of the said trust deed; and

Whereas, the said company has contracted to sell the hereinafter described lands upon terms agreed upon by it and the said trustees to H. S. Button, for the sum of nine hundred and eight 90 ($908.90) dollars, which sum has been fully paid to the said D. O. Mills and Homer S. King, trustees as aforesaid;

Now, therefore, in consideration of the premises, and the said sum of nine hundred and eight 90 ($908.90) dol-

lars, the receipt whereof is hereby acknowledged, the parties of the first part do grant and convey to the said party of the second part, and to his heirs and assigns, the following described tracts of land situate, lying and being in the county of San Bernardino, and State of California, to wit:

The southeast quarter of northeast quarter (S. E. 1/4 of N. E. 1/4), and lots four (4) and five (5), of section thirty-three (33), in township one (1) south, of range five (5) west, San Bernardino base and meridian, containing ninety 89 (90.89) acres according to the United States Surveys, together with all the privileges and appurtenances thereunto appertaining and belonging; excepting and reserving all liability on the part of the Southern Pacific Railroad Company for taxes and assessments thereon since May 27, 1891, the said purchaser having heretofore agreed with said company to pay the same, and also reserving all claim of the United States to said tracts as mineral lands.

To have and to hold the aforesaid premises, to the party of the second part, his heirs and assigns, to his and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused its name to be signed to these presents by its vice-president and secretary, and its corporate seal to be hereunto affixed; and the said D. O. Mills and Homer S. King, trustees, by their said attorney, Jerome Madden, have hereunto subscribed their names and affixed their seals the date herein first writ-

ten. "Note.—The words "and assessment," interlined on this (2d) page before signing."—E. B. R.

SOUTHERN PACIFIC RAILROAD COMPANY,
By H. E. HUNTINGTON,
Its Vice-President.

[Corporate Seal]

By J. L. WILLICUTT,
Its Secretary.

D. O. MILLS,
HOMER S. KING,
Trustees.

By JEROME MADDEN,
Their Attorney in Fact.

State of California,
City and County of San Francisco. } ss.

On this 8th day of July, in the year one thousand eight hundred and ninety-six, before me, E. B. Ryan, a notary public in and for said city and county of San Francisco, State of California, personally appeared H. E. Huntington, known to me to be the vice-president, and J. L. Willicutt, known to me to be the secretary of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also, on this the day aforesaid, before me, the notary public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney in fact of D. O. Mills and Homer S. King, and acknowledged to me that he subscribed the names of the said D. O. Mills and Homer S. King there-

to as principal, and his own name as attorney in fact.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, State of California, on the day and year above written.

[Notarial Seal] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, and State of California.

No. 14. "Endorsed." Recorded at request of H. S. Button, Jul. 25, 1896, at 25 min. past 2 P. M. in book 233, of Deeds, page 29, Records of San Bernardino County. J. W. F. Diss, County Recorder. By J. F. Johnson, Jr., Deputy Recorder. Folios, 15. Fee, $1.90.

A full, true and correct copy of the original.

J. W. F. DISS,
County Recorder.
By J. F. JOHNSON, Jr.,
Deputy Recorder.

State of California,
County of San Bernardino } ss.

I, J. F. Johnson, Jr., county recorder in and for the county of San Bernardino, State of California, hereby certify the foregoing to be a full, true and correct copy of deed: Southern Pacific Railroad Company to H. S. Button, as recorded in book 233, of Deeds, page 29, records of San Bernardino County, State of California.

In witness whereof, I have hereunto set my hand and affixed my official seal this 30th day of June, 1902.

[Seal] J. F. JOHNSON, Jr.,
County Recorder.

[Endorsed]: Certified Copy of Deed, S. P. R. R. Co., to H. S. Button. Defendant Kyler's Exhibit 1. Filed before me July 5, 1902. A. M. Cates, Special Examiner.

Defendant Kyler's Exhibit No. 2.

We, Hollis S. Button and Cora L. Button, his wife, of San Bernardino County, California, in consideration of three hundred dollars, the receipt whereof is hereby acknowledged, grant to J. P. Kyler of the county of Ventura, State as aforesaid, all that real property situate in the said county of San Bernardino, State of California, bounded and described as follows:

Lot four (4) of section thirty-three (33), township one (1), south, range five (5) west, San Bernardino base and meridian, containing eleven (11) acres of land more or less.

Witness our hands this 27th day of June, 1896.

HOLLIS S. BUTTON. [Seal]

CORA L. BUTTON. [Seal]

State of California,
County of San Bernardino. } ss.

On this 27th day of June, in the year one thousand eight hundred and ninety-six, before me, W. L. Burton, a notary public in and for the county of San Bernardino, State of California, personally appeared Hollis S. Button and Cora L. Button, his wife, known to me to be the persons whose names are subscribed to the within

instrument and they acknowledged to me that they executed the same.

Witness my hand and official seal.

[Notarial Seal] W. L. BURTON,

Notary Public in and for the County of San Bernardino, State of California.

No. 12. Recorded at request of J. P. Kyler, Aug. 18th, 1896, at 25 min. past 3 P. M., in book 229, Records of San Bernardino County. J. W. F. Diss, County Recorder. By J. F. Johnson, Jr., Deputy Recorder. Folios 3, Fee .80, pd.

I hereby certify that the foregoing deed is a true copy of an original deed filed in evidence before me on the 5th day of July, 1902. A. M. Cates, Special Examiner and Stenographer. Defendant Kyler's Exhibit 2. Filed before me July 5, 1902. A. M. Cates, Special Examiner.

Defendant Kyler's Exhibit No. 3.

Deed No. 10794.

This deed, made May 30th, 1896, between the Southern Pacific Railroad Company, a corporation, D. O. Mills and Homer S. King, trustees, under the trust deed hereinafter set forth, the parties of the first part, and J. P. Kiler, of the county of Ventura, State of California, the party of the second part, witnesseth; That.

Whereas, on April 1st, 1875, the said Southern Pacific Railroad Company, by trust deed bearing that date, conveyed to D. O. Mills and Lloyd Tevis, their

successors and assigns, all lands granted by the United States to aid in the construction of the said company's railroads, in trust to secure payment of certain bonds particularly set forth in the said trust deed; of which the lands hereinafter described are a part; and

Whereas, the said trust deed provided that the said company may sell the lands in it conveyed as opportunity occurred, upon terms agreed upon by the said company and trustees; and that when any tract or parcel of said lands shall have been sold and the purchase price fully paid, it shall be conveyed in fee simple by the said company and trustees, to the purchaser thereof; and that such conveyance shall release the land so conveyed from all lien or encumbrance of the said trust deed, absolutely and forever; and

Whereas, the said trust deed further provided, that in case a vacancy should occur in the number of said trustees, such vacancy should be filled by the nomination of the remaining trustee, subject to the approval of the Board of Directors of the said company; and that the person so nominated and approved should, immediately upon his acceptance of such appointment, become a trustee under such trust deed, vested with the same estates, powers, rights and interests, and charged with the same duties and responsibilities, as if he had been one of the original trustees named in and who executed the said trust deed; and

Whereas, on March 24th, 1883, Lloyd Tevis, one of the trustees aforesaid, resigned his trust under the said trust deed; and on April 3d, 1883, the said D. O.

Mills, as remaining trustee, nominated Gerrit L. Lansing to fill the vacancy created by the resignation of the said Lloyd Tevis; and on April 17th, 1883, the Board of Directors of the said company approved the nomination of the said Gerrit L. Lansing; and on April 18th, 1883, the said Gerrit L. Lansing duly accepted the said appointment; and

Whereas, on February 4th, 1896, the said Gerrit L. Lansing died; and on March 14th, 1896, the said D. O. Mills, as remaining trustee, nominated Homer S. King to fill the vacancy created by the death of the said Gerrit L. Lansing; and on March 18th, 1896, the Board of Directors of the said company approved the nomination of the said Homer S. King; and on March 21st, 1896, the said Homer S. King duly accepted the said appointment; and

Whereas, the said trust deed further provided that the trustees under it shall have the power and authority to act by attorney, to be appointed by them, in making the conveyances in said trust deed provided for; such appointment to be made by letter of attorney, duly acknowledged, and to be recorded in each county within which any of the lands of the said trust deed are situated; and that all deeds made in the names of such trustees, by their attorney appointed as aforesaid, shall have the same force and effect as if made by the said trustees in person; and

Whereas, on March 28th, 1896, the said D. O. Mills and Homer S. King, trustees as aforesaid, by letter of attorney duly acknowledged and recorded as in the

said trust deed provided, appointed Jerome Madden their true and lawful attorney, in their names, place and stead to make, execute and deliver all conveyances required of them under and pursuant to the terms of the said trust deed; and

Whereas, the said company has contracted to sell the hereinafter described lands upon terms agreed upon by it and the said trustees to H. S. Button, for the sum of four hundred and fifteen 20/100 ($415.20) dollars, which sum has been fully paid to the said D. O. Mills and Homer S. King, trustees as aforesaid, in part by the said H. S. Button, and the remainder by his assignee, J. P. Kyler;

Now, therefore, in consideration of the premises, and the said sum of four hundred and fifteen 20/100 ($415.20) dollars, the receipt whereof is hereby acknowledged, the parties of the first part do grant and convey to the said party of the second part, and to his heirs and assigns, the following described tract of land situate, lying and being in the county of San Bernardino, and State of California, to wit:

Lot three (3) of section No. thirty-three (33), in township one (1) south, of range five (5) west, San Bernardino base and meridian, containing forty-one 52/100 (41.52) acres, according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging: Excepting and reserving all liability on the part of the Southern Pacific Railroad Company for taxes thereon since May 18th, 1891, the said purchaser having heretofore agreed

with said company to pay the same, and also reserving all claim of the United States to said tract as mineral lands.

To have and to hold the aforesaid premises, to the said party of the second part, his heirs and assigns, to his and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused its name to be signed to these presents by its vice-president and secretary, and its corporate seal to be hereunto affixed; and the said D. O. Mills and Homer S. King, trustees, by their said attorney, Jerome Madden, have hereunto subscribed their names and affixed their seals the date herein first written.

SOUTHERN PACIFIC RAILROAD COMPANY,
By H. E. HUNTINGTON,
Its Vice-President.
[Seal] By J. L. WILLCUTT,
Its Secretary.
D. O. MILLS, [Seal]
HOMER S. KING, [Seal]
Trustees.
By JEROME MADDEN,
Their Joint Attorney in Fact.

State of California,
City and County of San Francisco. } ss.

On the 3d day of June in the year one thousand eight hundred and ninety-six (1896) before me, E. R. Ryan, a notary public in and for said city and county of San

Francisco, State of California, personally appeared H. E. Huntington, known to me to be the vice-president, and J. N. Willcutt, known to me to be the secretary, of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also, on this the day aforesaid, before me, the notary public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney in fact of D. O. Mills and Homer S. King, and acknowledged to me that he subscribed the names of the said D. O. Mills and Homer S. King thereto as principals, and his own name as attorney in fact.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, State of California, on the day and year above written.

[Notarial Seal] E. B. RYAN,

Notary Public in and for the city and county of San Francisco, and State of California.

No. 17. Deed No. 10,749. Southern Pacific Railroad Co. D. O. Mills and Homer S. King, Trustees, to J. P. Kiler. Deed, dated May 30th, 1896.

Recorded at request of J. P. Kiler, Jun. 17, 1896, at 10 min. past 2 P. M. in Book 226 of Deeds, page 89, Records San Bernardino County.

J. W. F. DISS.
County Recorder.
By J. F. Johnson, Jr.,
Deputy Recorder.

Folios, 15, Ventura, Calif. Fee, $2.00.

I hereby certify that the foregoing deed is a true copy of an original deed filed in evidence before me on the 5th day of July, 1902.

A. M. CATES,
Special Examiner and Stenographer.

Defendant Kyler's Exhibit 3. Filed before me July 5th, 1902. A. M. Cates, Special Examiner.

Defendant Davis' Exhibit No. 1.

Deed No. 10,762.

This deed, made July 8th, 1896, between the Southern Pacific Railroad Company, a corporation, D. O. Mills and Homer S. King, Trustees, under the trust deed hereinafter set forth, the parties of the first part, and H. S. Button, the party of the second part, witnesseth:

That whereas, on April 1st, 1875, the said Southern Pacific Railroad Company, by trust deed bearing date, conveyed to D. O. Mills and Lloyd Tevis, their successors and assigns, all lands granted by the United States to aid in the construction of the said company's railroads, in trust to secure payment of certain bonds particularly set forth in the trust deed, of which the lands hereinafter described are a part; and Whereas, the said trust deed provided that the said company may sell the lands in it conveyed as opportunity occurred, upon terms agreed upon by the said company and trustees; and that when any tract or parcel of said lands shall have been sold and the purchase price fully paid, it

shall be conveyed in fee simple by the said company and trustees, to the purchaser thereof; and that such conveyance shall release the land so conveyed from all lien or encumbrance of the said trust deed, absolutely and forever; and whereas, the said trust deed further provided, that in case a vacancy should occur in the number of said trustees, such vacancy should be filled by the nomination of the remaining trustee, subject to the approval of the board of directors of the said company; and that the person so nominated and approved should immediately upon his acceptance of such appointment, become a trustee under such trust deed vested with the same estates, powers, rights and interests, and charged with the same duties and responsibilities, as if he had been one of the original trustees named in and who executed the said trust deed; and

Whereas, on March 24th, 1883, Lloyd Tevis, one of the trustees aforesaid, resigned his trust under the said trust deed; and on April 3d, 1883, the said D. O. Mills, as remaining trustee, nominated Gerrit L. Lansing to fill the vacancy created by the resignation of the said Lloyd Tevis; and on April 17th, 1883, the Board of Directors of the said Company approved the nomination of the said Gerrit L. Lansing; and on April 18th, the said Gerrit L. Lansing duly accepted the said appointment; and whereas, on February 4th, 1896, the said Gerrit L. Lansing died, and on March 14th, 1896, the said D. O. Mills, as remaining trustee, nominated Homer S. King to fill the vacancy created by the death of the said Gerrit L. Lansing; and on March 18th, 1896, the

Board of Directors of the said Company approved the nomination of the said Homer S. King, and on March 21st, 1896, the said Homer S. King duly accepted the said appointment; and

Whereas, the said trust deed further provided that the trustees under it shall have the power and authority to act by attorney, to be appointed by them, in making the conveyances in said trust deed provided for; such appointment to be made by letter of attorney duly acknowledged, and to be recorded in each county within which any of the lands of the said trust deed are situated; and all deeds made in the names of such trustees, by their attorney appointed as aforesaid, shall have the same force and effect as if made by the said trustees in person; and whereas, on March 28th, 1896, the said D. O. Mills and Homer S. King, trustees as aforesaid, by letter of attorney, duly acknowledged and recorded as in the said trust deed provided, appointed Jerome Madden their true and lawful attorney in their name, place and stead, to make, execute and deliver all conveyances required of them under and pursuant to the terms of the said trust deed.

And whereas, the said company has contracted to sell the hereinafter described lands upon terms agreed upon by it and the said trustees to H. S. Button for the sum of nine hundred and eight 90 (908.90) 'dollars, which sum has been fully paid to the said D. O. Mills and Homer S. King, trustees as aforesaid;

Now therefore, in consideration of the premises, and the said sum of nine hundred and eight 90 ($908.90)

dollars, the receipt whereof is hereby acknowledged, the parties of the first part do grant and convey to the said party of the second part, and to his heirs and assigns, the following described tract of land situate lying and being in the county of San Bernardino, and State of California, to wit:

The southeast quarter of the northeast quarter (S. E. 1/4 of N. E. 1/4) and lots four (4) and five (5) of section thirty-three (33) in township one (1) south, of range five (5) west San Bernardino base and meridian, containing ninety 89/ (90.89) acres acocrdig to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging. Excepting and reserving all liability on the part of the Southern Pacific Railroad Company, for taxes and assessments thereon since May 27th, 1891, the said purchaser having heretofore agreed with said company to pay the same, and also reserving all claim of the United States to said tracts as mineral lands.

To have and to hold the aforesaid premises, to the party of the second part, his heirs and assigns, to his and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused its name to be signed to these presents by its vice-president and secretary, and its corporate seal to be hereunto affixed; and the said D. O. Mills and Homer S. King, trustees, by their said attorney, Jerome Madden, have hereunto subscribed their names and affixed their seals and the date herein first written.

"Note.—The words 'and assessment' interlined on this (2d) page before signing."

SOUTHERN PACIFIC RAILROAD COMPANY.
By H. E. HUNTINGTON,
Its Vice-President.
[Corporate Seal.] By J. L. WILLCUTT,
Its Secretary.
D. O. MILLS.
HOMER S. KING.
Trustees.
By JEROME MADDEN,
Their Joint Attorney in Fact.

State of California,
City and County of San Francisco, } ss.

On this 8th day of July, in the year one thousand eight hundred and ninety-six, before me, E. B. Ryan, a notary public in and for said city and county of San Francisco, State of California, personally appeared H. E. Huntington known to me to be the vice-president and J. L. Willcutt, know to me to be the Secretary, of the corporation that executed the within instrument, and each of them acknowledged to me that such corporation executed the same; also, on this the day aforesaid, before me, the notary public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of D. O. Mills and Homer S. King and acknowledged to me that he subscribed the names of the said

D. O. Mills and Homer S. King thereto as principal, and his own name as attorney in fact.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, State of California, on the day and year above written.

E. B. RYAN,

[Notarial Seal.]

Notary Public in and for the City and County of San Francisco, and State of California.

No. 14. "Endorsed," Recorded at request of H. S. Button, Jul. 25, 1896, at 25 min. past 2 P. M. in Book 223 of Deeds, page 29, Records San Bernardino County, J. W. F. Diss, County Recorder, by J. F. Johnson Jr., Deputy Recorder. Folios 15. Fee, $1.90.

A full true and correct copy of the original.

J. W. F. DISS,
County Recorder,
By J. F. Johnson, Jr.,
Deputy Recorder.

State of California,
County of San Bernardino. } ss

I, J. F. Johnson, Jr., County Recorder in and for the County of San Bernardino, State of California, hereby certify the foregoing to be a full, true and correct copy of deed, Southern Pacific Railroad Co. to H. S. Button as recorded, in Book 233, page 29 of Deeds, Records of San Bernardino County, State of California.

In witness whereof, I have hereunto set my hand and affixed my official seal this 1st day of July, 1902.

[Seal.] J. F. JOHNSON, Jr.,
County Recorder.
By E. R. Fussell,
Deputy.

Defendant Davis' Exhibit 1. Filed before me July 5, 1902. A. M. Cates, Special Examiner.

Defendant Davis' Exhibit No. 2.

We, H. S. Button and Mrs. Cora L. Button, husband and wife, in consideration of ten dollars the receipt whereof is hereby acknowledged, grant to William H. Davis all that real property situate in the county of San Bernardino, State of California, bounded and described as follows:

The southeast quarter (S. E. 1/4) of the northeast quarter (N. E. 1/4) of section numbered thirty-three (33) in township one south (1 S.) of range five west (5 W.), San Bernardino base and meridian containing forty acres of land.

Witness our hands this 29th day of December, 1899.

H. S. BUTTON. [Seal]
Mrs. CORA L. BUTTON. [Seal]
EVELINE A. BUTTON.
SETH HARTLEY.

State of California,
County of Los Angeles. } ss.

On this 29th day of December, in the year of our Lord one thousand eight hundred and ninety-nine, before me, Cal. F. Hunter, a notary public in and for the said county of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Mrs. Cora L. Button, known to me to be the person described in and whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Notarial Seal] CAL. F. HUNTER,
Notary Public in and for the County of Los Angeles, State of California.

State of California,
County of San Bernardino. } ss.

On this thirtieth day of December, in the year one thousand eight hundred and ninety-nine before me, D. Johnston, a Notary Public in and for the county of San Bernardino, State of California, personally appeared H. S. Button, known to me to be the person whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

Witness my hand and official seal,

[Notarial Seal] D. JOHNSTON,

Notary Public in and for the County of San Bernardino, State of California.

Rev. Stamp 50 ¢ No. 17.

Recorded at request of William H. Davis, Jan. 2, 1900, at 59 min. past 9 A. M. in Book 276, of Deeds page 264, Records of San Bernardino County. J. F. Johnson, Jr., County Recorder. Folios 5. Fee, 1.00.

I hereby certify that the foregoing deed is a true copy of an original deed filed in evidence before me on the 5th day of July, 1902.

A. M. CATES,
Special Examiner and Stenographer.

Defendant Davis' Exhibit 2. Filed before me July 5, 1902. A. M. Cates, Special Examiner.

Defendant Colwell's Exhibit No. 1.

Deed No. 10123.

To All To Whom These Presents Shall Come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills, and Gerrit L. Lansing, trustees of all the lands of the said Southern Pacific Railroad Company, lying in the State of California, which remained unsold on the first day of April, A. D. 1875, send greeting:

Whereas, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all

its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G; Series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; Series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct: All of said

bonds aggregating the sum of forty-six millions of dollars;

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said trustees; and that when such sales had been made, and the purchase money fully paid, the said company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or encumbrance for or on account of said bonds, or any other debt or obligation of the said Railroad Company;

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3d day of April, 1883, the said D. O. Mills, the remaining trustees under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing of the city of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint

said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of trustee under said deed of trust.

And whereas, said deed of trust further provided, that, for the sake of convenience in making said conveyances, the said trustees should have power to act by attorney, duly nominated and appointed by them jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands or any part thereof, are situated, and that all deeds made in their name by such attorney should have the same force and effect as if made by them in person.

B. A. &. R.

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden, of the city and county of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them, as aforesaid;

And whereas, the said Railroad Company contracted to sell their lands hereinafter described, pursuant to the foregoing conditions, to Mrs. Kate Bryant McVay, of the county of Los Angeles, State of California, for the sum of eleven hundred and sixty-three 46/100 (1163.46) dollars, which sum has been fully paid to the

said D. O. Mills, and Gerrit L. Lansing, trustees as aforesaid.

Now, therefore, in consideration of the premises, and the said sum of eleven hundred and sixty-three 46/100 (1163.46) dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, trustees, as aforesaid, do grant, bargain, sell and convey to the said Mrs. Kate Bryant McVay, and to her heirs and assigns, the following described tracts of land situate, lying and being in the county of Riverside, and State of California, to wit:

The northwest quarter (N. W. 1/4) and lots three and four in southwest quarter (lots 3 and 4 in S. W. 1/4) of section No. seventeen (17) in township two (2) south of range six (6) west, San Bernardino base and meridian, containing one hundred and ninety-three 91/100 (193.91) acres, according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging; excepting and reserving all liability on the part of the Southern Pacific Railroad Company for taxes thereon since July 5th, 1889, the said purchaser having heretofore agreed with said company to pay the same, and also reserving all claim of the United States to said tracts as mineral lands.

To have and to hold, the aforesaid premises, to the said Mrs. Kate Bryant McVay, her heirs and assigns, to her and their use and behoof forever.

In testimony whereof, the said Southern Pacific Rail-

road Company, has caused its name to be signed to these presents by its president and secretary, and its corporate seal to be hereunto affixed; and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden, have hereunto subscribed their names and affixed their seals, this twenty-fifth day of September, A. D. 1895.

SOUTHERN PACIFIC RAILROAD COMPANY,
By CHAS. F. CROCKER,
Its President.

C. T. F.

By J. L. WILLCUTT,
Its Secretary.

[Seal of Southern Pacific Railroad Company]

D. O. MILLS, [Seal]
GERRIT L. LANSING, [Seal]
Trustees.

By JEROME MADDEN,
Their Joint Attorney in Fact.

State of California,
City and County of San Francisco. } ss.

On this 25th day of September, in the year one thousand eight hundred and ninety-five, before me, E. B. Ryan, a notary public in and for the city and county of San Francisco, State of California, personally appeared Charles F. Crocker, known to me to be the president, and J. L. Willcutt, known to me to be the secretary of the corporation that executed the within instrument; and each of them acknowledged to me that

such corporation executed the same; also, on this the day aforesaid, before me, the notary public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney in fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney in fact.

In witness whereof, I have hereunto set my hand and affixed my Official Seal at my office in the city and county of San Francisco, State of California, on the day and year above written.

[Seal of Notary]

E. B. RYAN,
Notary Public in and for the City and County of San Francisco, and State of California.

Indorsements. Received for record Sep. 30 1895, at 45 min. past 4 o'clock P. M. at request of A. & G. Co. Recorded in book No. 26 of Deeds, page 73 et seq., Records of Riverside County, California, on Oct. 1, 1895, at 5 min. past 10 o'clock A. M. E. H. Grawell, Recorder. By C. O. Alkire, Deputy Recorder. Fees, $2.20.

State of California,
County of Riverside. } ss.

I hereby certify, the foregoing to be a full, true and correct copy of the instrument appearing recorded in Book No. 26 of Deeds, page 73, Records of Riverside

County, and that I have carefully compared the same with the original record.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 3 day of July, 1902.

[Seal] E. H. GRUWELL,
County Recorder.

Defendant Colwell's Exhibit 1. Filed before me July 5, 1902. A. M. Cates, Special Examiner.

Defendant Colwell's Exhibit No. 2.

This indenture, made the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and ninety-nine, between W. E. McVay and Kate Bryant McVay, his wife, the parties of the first part, and Chas. H. Colwell, the party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of ten dollars lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, and sell, convey and confirm, unto the said party of the second part, and to his heirs and assigns, forever, all that certain lot, piece or parcel of land, situate, lying and being in the county of Riverside, State of California, and bounded and particularly described as follows, to wit:

The west twenty (20) acres of lots numbered three (3) and four (4) in the southwest one-quarter (S. W.

1/4) of section seventeen (17) township two (2) south, range six (6) west, San Bernardino meridian.

This deed is made and executed to correct a former deed given by me in which the grantee's name was spelt "Calwell," and should have been Colwell.

Together, with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of

W. E. McVAY. [Seal]
KATE BRYANT McVAY. [Seal]

State of California,
County of Los Angeles. } ss.

On this 3d day of April in the year one thousand eight hundred and ninety-nine, before me, Wm. Dieterle, a notary public in and for the county of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared W. E. McVay and Kate Bryant McVay, his wife, known to me to be the persons whose names are subscribed to

the within instrument, and acknowledged to me that they executed the same.

[Notarial Seal] WM. DIETERLE,
Notary Public in and for said Los Angeles County, State of California.

Received for record, Apr. 11, 1899, at 30 min. past 9 o'clock A. M. at request of Riverside Abstract Company, copied in Book No. 79, of Deeds, page 251, et seq., Records of Riverside County, California.

E. H. GRUWELL,
Recorder.

Fees $1.10.

I hereby certify that the foregoing deed is a true copy of an original deed filed in evidence before me on the 5th day of July, 1902.

A. M. CATES,
Special Examiner and Stenographer.

Defendant Colwell's Exhibit 2. Filed before me July 5, 1902. A. M. Cates, Special Examiner.

Defendant Avery's Exhibit No. 1.

This indenture, made the twenty-second day of March, in the year of our Lord, one thousand eight hundred and ninety-nine between Chas. H. Colwell and Carrie E. Colwell, his wife, of the city and county of Los Angeles, State of California, the parties of the first part, and Russ Avery of Los Angeles, city and county, State of California, the party of the second part.

Witnesseth: That the said parties of the first part, for and in consideration of the sum of one hundred dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece or parcel of land, situate, lying and being in the county of Riverside, State of California, and bounded and particularly described as follows, to wit:

East ten (10) acres of the west twenty acres of lots 2 and 4 in the southwest quarter of section 17, township two south, range 6 west, S. B. M.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

CHAS. H. COLWELL. [Seal]
CARRIE E. COLWELL. [Seal]

Signed, sealed and delivered in the presence of

_____.

(10c Revenue Stamp.)

State of California, }
County of Los Angeles. } ss.

On this 22d day of March, in the year one thousand eight hundred and ninety-nine, before me, Emmet H. Wilson, a notary public, in and for said county, residing therein, duly commissioned and sworn, personally appeared Chas. H. Colwell and Carrie E. Colwell, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Witness my hand and official seal.

[Notarial Seal] EMMET H. WILSON,
Notary Public in and for said Los Angeles County.

No. 2. Received for record Apr. 11, 1899, at 31 min. past 9 o'clock A. M. at request of Riverside Abstract Company, copied in Book No. 79 of Deeds, page 257 et seq., Records of Riverside County, California. Fees, $1.10.

E. H. GRUWELL,
Recorder.

I hereby certify that the foregoing deed is a true copy of an original deed filed in evidence before me on the 5th day of July, 1902.

A. M. CATES,
Special Examiner and Stenographer.

Defendant Avery's Exhibit 1. Filed before me July 5, 1902. A. M. Cates, Special Examiner.

I certify that the foregoing testimony was taken pursuant to an order of the above-named court, made and entered upon the minutes of said court at the time and place in the foregoing testimony named in the city of Los Angeles, county of Los Angeles, State of California, in my presence and in the presence of counsel in said testimony named, and constitutes all the testimony then and there adduced. That previous to giving his testimony each of the witnesses in said record named was by me duly sworn to tell the truth, the whole truth and nothing but the truth in said cause; that said testimony was fully, truly and correctly taken in shorthand and transcribed by me. That the said testimony after being so transcribed was not read by, nor by me to, said witnesses nor signed by them, nor either of them, it being expressly agreed and stipulated between counsel for the respective parties that such reading and signing should be waived as in the said record set forth.

Accompanying said testimony and forming a part thereof, are the several exhibits introduced in connection therewith and referred to and specified therein, as set forth in the foregoing record.

I further certify that I am not attorney nor of counsel for any of the parties to said cause, nor in any way interested in the evidence thereof.

In witness whereof, I have hereunto set my hand this 8th day of July, A. D. 1902.

A. M. CATES,
Special Examiner and Stenographer.

[Endorsed]: No. 979. In the United States Circuit Court, 9th Circuit, So. Dist. Cal., So. Div. The United States vs. S. P. R. R. Co. et al. Report of A. M. Cates, Special Examiner and Stenographer. Filed Jul. 8, 1902. Wm. M. Van Dyke, Clerk. Refiled after correction Jul. 9, 1902. Wm. M. Van Dyke, Clerk.

At a stated term, to wit, the July Term, A. D. 1902, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division, held at the courtroom in the city of Los Angeles, on Monday, the fourteenth day of July, in the year of our Lord one thousand nine hundred and two. Present: The Honorable OLIN WELLBORN, District Judge.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, et al.,
Defendants.
No. 979.

Order Appointing Special Examiner.

On motion of Joseph H. Call, Esq., Special Assistant United States Attorney, of counsel for complainants, and it appearing that counsel for defendants consent thereto, it is ordered that Stephen M. Potter, Esq., be

and he is hereby appointed a special examiner and stenographer of this court to take the testimony in this cause at San Francisco, California, and to report the same when so taken to this court.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said court July 14th, 1902, in the cause entitled, The United States of America, Complainants, vs. The Southern Pacific Railroad Company, et al., No. 979, and now remaining of record therein.

Attest my hand and the seal of said Circuit Court this 14th day of July, A. D. 1902.

[Seal] WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 979. U. S. Circuit Court, Ninth Circuit, Southern District of California, Southern Division. United States of America, vs. Southern Pacific R. R. Co., et al. Certified copy of Order Appointing Special Examiner and Stenographer.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

UNITED STATES OF AMERICA, Complainant,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, and Others, Defendants.
No. 979.

Report of Stephen Potter, Special Examiner.

TESTIMONY.

Testimony taken at San Francisco, California, by Stephen Potter as Special Examiner and Stenographer, pursuant to the order of the above-entitled court, made on July 14th, 1902, a certified copy of which is annexed to this report; there being present Hon. Joseph H. Call, Special United States Attorney, on behalf of the complainant, and Mr. Wm. Singer, Jr., attorney for defendants.

Thereupon the following proceedings were had:

Friday, July 18th, 1902.

JEROME MADDEN, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

Mr. CALL.—I would like to have it understood, that this testimony is subject to all valid objections as to its competency, relevancy and materiality.

(Testimony of Jerome Madden.)

Mr. SINGER.—It may be so understood.

Q. Mr. Madden, are you an officer of the Southern Pacific Railroad Company? A. I am.

Q. What is your office?

A. Land agent of the Southern Pacific Railroad Company.

Q. How long have you been land agent?

A. For this particular company at this time, since March 14th, 1902, but for the predecessor of this company, since May 10th, 1876.

Q. You were the Southern Pacific Railroad Company's first land agent, were you not?

A. No, sir, Mr. E. B. Redding was land agent before I was, for one year before I was appointed.

Q. Since your appointment you have been continuously land agent for the Southern Pacific Railroad Company? A. I have.

Q. Are you the custodian of the books, showing sales made by that company of the lands of its grants?

A. I am.

Q. Are you also the custodian of patents received for the lands of those grants? A. I am.

Q. Have you made a statement from your books showing the sales made by your company of lands involved in this suit No. 979? A. I have.

Q. Is this the statement? (Showing.)

A. That is the statement.

Q. Have you recently compared and checked the

(Testimony of Jerome Madden.)

representations made upon this statement with the books and files of your office?

A. I examined them personally the day before yesterday.

Q. Are the representations made on this statement correct in every particular?

A. They are absolutely correct.

Mr. SINGER.—I will now offer the statement referred to by Mr. Madden in evidence, and ask that it be marked Defendants' Exhibit No. 1.

(The statement is marked by the Special Examiner Defendants' Exhibit No. 1.)

Mr. SINGER.—Mr. Call, we can produce the original statements and patents of which this statement is an abstract, but it would be very cumbersome to do so, and I will ask you to excuse the production of the originals.

Mr. CALL.—I understand that the statements referred to, contain a list of the lands involved in this suit, so far as sold by the Southern Pacific Railroad Company, or contracted to be sold, do I?

Mr. SINGER.—That is correct.

Mr. CALL.—And it also shows the dates of the respective sales, the names of the purchasers, and the amounts contracted to be sold for, and the amounts received, and the dates of the patents from the United States to the Railroad Company, so far as the lands were patented.

(Testimony of Jerome Madden.)

Mr. SINGER.—That is true, excepting that it does not contain patents for the lands in suit not sold.

Mr. CALL.—I will consent that the statment may be received in lieu of the original patents and contracts of sale, with the same effect as if the originals were introduced.

Mr. SINGER.—Q. Were all the sales shown on the statement just introduced as Defendants' Exhibit No. 1, made by you? A. Yes.

Q. Did you solicit, in any instance, the purchase or sale, or were the purchases made by volunteers?

A. I have not requested anybody to buy any railroad land, and in this case I did not request any of those persons to buy the lands that they purchased.

Q. Were any of those sales collusive for any purpose? A. No.

Q. You may state whether they represent ordinary current business transactions, or something else?

A. They do represent the ordinary current transactions of the land office of the Southern Pacific Railroad Company.

Q. As between the seller and the purchaser, were they good faith transactions?

A. They were, absolutely so.

Q. Have you with you a blank form used for the deeds shown on the statement?

A. The deeds on the statement were written on blanks similar to that. (Producing blank form of deed.)

(Testimony of Jerome Madden.)

Mr. SINGER.—I will now introduce the blank deed, produced by Mr. Madden, and ask that it be marked Defendants' Exhibit No. 2. (The blank form of deed is marked by the Special Examiner, "Defendants' Exhibit No. 2.")

Q. Has the Southern Pacific Railroad Company's Branch Line Grant, the grant made by the act of March 3d, 1871, been finally adjusted by the Interior Department? A. Not altogether.

Q. Have you received patents for all the lands covered by approved selection lists?

A. No, indeed.

Q. Is the quantity of approved land in selection lists not yet patented large or small?

A. Quite large.

Mr. CALL.—I would like to ask what you mean by "Approved Lists."

Mr. SINGER.—I mean lists which have received the approval of the Register and Receiver at the time of presentation.

Q. What approximately would you state it at?

A. I do not think I could give you a definite answer as to that at the present time; that is, as far as the Southern Pacific Railroad Company's Branch Line is concerned; but there are approved lists for the Land Department for lands in the Southern Pacific Railroad Company's Branch Grant and Main Line Grant.

Mr. CALL. (Interrupting.)—I wish to object to the

(Testimony of Jerome Madden.)

question upon the further ground that it is not the best evidence.

The WITNESS (Continuing).—They amount at the present time to 338,000 acres, for which surveying fees were paid $15,210.

Mr. CALL.—Q. That represents what, Mr. Madden?

A. That represents the lands that are selected and the lists approved in the Southern Pacific Railroad Company's Branch Line Grant and Main Line Grant.

Mr. SINGER.—Q. Approved by the Register and Receiver?

A. Yes, sir. I have not segregated them.

Q. That is in the Main and Branch Line you say?

A. In the Main and Branch Line.

Mr. SINGER.—Mr. Madden, I will ask you to produce an approximate statement of the quantity of land within the primary limits of the Southern Pacific Branch Line Grant, and outside the Indemnity and Primary Limits of the Atlantic and Pacific Overlap thereon, and outside the withdrawal limits established by the Interior Department for the Texas Pacific Grant, which have been approved to the Southern Pacific Railroad Company under its Branch Line Grant Primary Limits selections, but not yet patented; the basis of this statement being the Primary Limits of the Branch Line Grant as established by the permanent withdrawal maps of the Interior Department adjusted to the Southern Pacific Branch Line constructed

(Testimony of Jerome Madden.)

road. By "Approved selections" I mean, approved by the local land officers to whom they were presented.

Mr. CALL.—Q. Can you state approximately the number of acres of land within the indemnity limits of the Southern Pacific Grant of 1871, outside of the thirty-mile limits of the Atlantic and Pacific Grant, which have not been selected as Indemnity by the Southern Pacific Railroad, and which remain open lands?

A. I cannot without examination.

Mr. CALL.—I will concede that the quantity called for by the preceding question of Mr. Singer exceeds 10,000 acres.

Mr. SINGER.—I will offer in evidence a plat, certified by the United States Surveyor General for California, under certificate dated July 17th, 1902, of section 33, in township 1 south, range 5 west, and ask that it be attached to the record, and marked Defendants' Exhibit No. 3.

(The plat with the certificate thereto attached are marked by the Special Examiner, Defendants' Exhibit No. 3.)

Mr. CALL.—I want to ask you Mr. Singer, if you will allow me to file in evidence with the clerk of the Circuit Court, certified copies of the Township plats of the lands described in the bill in this case?

Mr. SINGER.—Certainly.

(Testimony of Jerome Madden.)

Mr. CALL.—Then I will do that without formally offering them before the Examiner.

Mr. SINGER.—I will offer in evidence a certified copy of the mandate of the Supreme Court of the United States in a case between the United States and Abel Stearns, substituted for Juan Bandini, and ask that it be attached to the record, and marked Defendants' Exhibit No 4.

(The certified copy of the Mandate is marked by the Examiner Defendants' Exhibit No. 4.)

Mr. SINGER.—I introduce in evidence a certified copy of an order of the District Court of the United States in the same case, and ask that it be attached to the record, and marked Defendants' Exhibit No. 5.

(The certified copy of the order is marked by the Examiner, Defendants' Exhibit No. 5.)

Mr. SINGER.—Will you excuse the signature of Mr. Madden to the deposition?

Mr. CALL.—Yes, sir.

J. L. WILLCUTT, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

Mr. CALL.—I would like to have it understood that this testimony is subject to all valid objections as to its competency, relevancy and materiality.

(Testimony of J. L. Willcutt.)

Mr. SINGER.—It may be so understood.

Q. Mr. Willcutt, are you an officer of the Southern Pacific Railroad Company? A. Yes, sir.

Q. How long have you been such?

A. I have been secretary of the company since October, 1870.

Q. Are you the custodian of the trust mortgage given by the Southern Pacific Railroad Company to D. O. Mills and Lloyd Tevis on April 1st, 1875?

A. I have copies of those mortgages. Of course the mortgage properly belongs with the trustee. Those originals may be in my possession now, or they may not, but I have copies of them.

Q. Have you with you, a copy of the mortgage mentioned? A. Yes, sir.

Q. Will you please produce it?

(The witness produces a printed copy of trust mortgage of the Southern Pacific Railroad Company, to D. O. Mills and Lloyd Tevis, Trustees, dated April 1st, 1875.)

Mr. SINGER.—I will offer this copy of the mortgage in evidence, and ask that it be marked Defendants' Exhibit No. 6.

(The copy of the trust mortgage is marked by the Examiner, Defendants' Exhibit No. 6.)

Mr. CALL.—The copy may be offered in evidence with the same effect as the original, subject to all objections to the original.

(Testimony of J. L. Willcutt.)

Mr. SINGER.—Q. Have you also a copy of the trust mortgage of Sept. 15th, 1893, given by the Southern Pacific Railroad Company to the Central Trust Company of New York? A. I have.

Q. Will you please produce the copy?

(The witness produces printed copy of Deed of Trust dated Sept. 15th, 1893, from the Southern Pacific Railroad Company to The Central Trust Company of New York.)

Mr. SINGER.—I now introduce this copy in evidence, and ask that it be marked Defendants' Exhibit No. 7.

(The copy of the deed of trust is marked by the Examiner, Defendants' Exhibit No. 7.)

Mr. CALL.—This copy may be offered in lieu of the original, subject to the same objections.

Mr. SINGER.—Q. To what extent on March 2d, 1896, were the bonds issued under the trust mortgage of 1875 outstanding?

A. There were outstanding on that date $30,667,500.

Q. And on that date, what was the amount of outstanding bonds of the other trust mortgage?

A. $16,883,000.

Q. Were those bonds sold for value?

A. They were.

Mr. SINGER.—Will you excuse Mr. Willcutt's signature.

Mr. CALL. Yes, the signature is waived.

In the Circuit Court of the United States, Ninth Circuit
Southern District of California.

IN EQUITY.

UNITED STATES OF AMERICA,
Complainant,
vs.
....
SOUTHERN PACIFIC RAILROAD COMPANY and Others,
Defendants.
No. 979.

Certificate of Special Examiner.

I certify the foregoing testimony was taken pursuant to an order of the above-named court, made and entered by said court July 14th, 1902, at the office of Mr. Wm. Singer, Jr., in Wells Fargo & Company's building, at the corner of Second and Mission streets, in the city and county of San Francisco, and State of California, upon Friday, the 18th day of July, A. D. 1902, in my presence and in the presence of counsel for the respective parties to the above-entitled cause, and constitutes all the testimony then and there adduced; that previous to giving his testimony, each of the witnesses in said record named, was by me duly sworn, to tell the truth, the whole truth and nothing but the truth in said cause; that said testimony was fully, truly and correctly taken in shorthand and transcribed by me; that the said testimony after being so transcribed was not read by or

by me to, the said witnesses, nor signed by them, respectively, it being expressly agreed and stipulated between counsel for the respective parties, that such reading and signing should be waived, as in said record set forth.

Accompanying said testimony, and forming part thereof, are the several exhibits introduced in connection therewith, and referred to and specified therein.

I further certify, that I am not attorney nor of counsel for any of the parties to said cause, nor in any way interested in the event thereof.

In witness whereof, I have hereunto set my hand this 24th day of July, A. D. 1902.

STEPHEN POTTER.
Special Examiner and Stenographer.

Defendants' Exhibit No. 1.

Contract No. 10,749.

Issued May 18th, 1891. To H. S. Button.

For lot 3, sec. 33, T. 1 S., R. 5 W., S. B. M.

Forty-one 50/100 (41.50) acres.

Agreed pur. price, $415.20. Pur. price paid, $415.20. Int. paid, $116.25.

Deed issued May 30, 1896, to J. P. Kyler.

Present owner of contract: ———.

Patent No. 25. Issued Aug. 15, 1894, for 41.50 acres of land described above.

Contract No. 10,762.

Issued May 27th, 1891. To H. S. Button.

For S. E. 1/4 of N. E. 1/4 and lots 4 and 5, sec. 33, T. 1 S., R. 5 W., S. B. M. (This lot 5 is duplicated in the bill of complaint as"N. E. 1/4 of S. E. 1/4.")

Ninety 89/100 (90.89) acres.

Agreed pur. price, $908.90. Pur. price paid, $908.90. Int. paid, $149.50.

Deed issued July 8th, 1896, to H. S. Button.

Present owner of contract (:) ————.

Patent No. 25. Issued Aug. 15, 1894, for 90.89 acres of land described above.

Contract No. 10,751.

Issued May 18th, 1891. To Miss Bertha Choate.

For lots 11 and 12, sec. 33, T. 1 S., R. 5 W., S. B. M.

Fifty-three 67/100 (53.67) acres.

Agreed pur. price, $536.70. Pur. price, paid, $536.70. Int. paid, $237.21.

Deed issued May 22, 1900, to Walter A Choate.

Present owner of contract: ————.

Patent No. 25. Issued Aug. 15, 1894, for 53.67 acres of land described above.

Contract No. 10,754.

Issued May 18th, 1891, to John E. Campbell.

For lot 3, sec. 35, T. 1 S., R. 5 W., S. B. M.

Forty-three 55/100 (43.55) acres.

Agreed pur. price, $435.50. Pur. price paid, $435.50. Int. paid, $187.04.

Deed issued March 27, 1900, to Calvin Ogburn.

Present owner of contract: ————.

Patent No. 25. Issued Aug. 15th, 1894, for 43.55 acres of land described above.

Contract No. 10,809.

Issued Sept. 10th, 1891. To Martin Comstock.

For lots 1 and 2 and S 1/2 of N. E. 1/4, sec. 1, T. 2 S., R. 6 W., S. B. M. (Lots 1 and 2 are described twice in the bill of complaint.)

One hundred and fifty-nine 92/100 (159.92) acres.

Agreed pur. price, $399.80. Pur. price paid, $79.96. Int. paid, $134.34.

Deed issued to contract on books in name of Martin Comstock (now deceased.)

Patent No. 25. Issued Aug. 15th, 1894, for 159.92 acres of land described above.

Contract No. 11,836.

Issued Oct. 13th, 1899. To Michael Craig.

For lots 3 and 4 and S 1/2 of N. W. 1/4, sec. 1, T. 2 S., R. 6 W., S. B. M.

One hundred and thirty-nine 81/100 (139.81) acres.

Agreed pur. price, $349.52. Pur. price paid, $69.90. Int. paid, $39.14.

Deed issued ——— to ———.

Present owner of contract: Michael Craig.

Patent No. 25. Issued Aug. 15th, 1894, for 139.81 acres of land described above.

Contract No. 2,898.

Issued Nov. 12, 1883. To O. J. Simpkins.

For lot 1, S. W. 1/4 of S. E. 1/4 S. 1/2 of S. W. 1/4, sec. 9, T. 2 S., R. 6 W., S. B. M.

One hundred and fifty-five 73/100 (155.73) acres.

Agreed pur. price, $467.19. Pur. price paid, $467.19. Int. paid, $135.88.

Deed issued Feby. 1, 1889, to A. G. Patton.

Present owner of contract: ————.

Patent No. 9. Issued Jany. 9, 1885, for 155.73 acres of land described above.

Contract No. 2,897.

Issued Nov. 12, 1883. To A. G. Patton.

For lots 3, 7 and 8 and N. 1/2 of S. E. 1/4, sec. 9, T. 2 S., R. 6 W., S. B. M.

One hundred and fifty-six 29/100 (156.29) acres.

Agreed pur. price, $468.87. Pur. price paid, $468.87. Int. paid, $136.40.

Deed issued Feb. 1, 1889, to A. G. Patton.

Present owner of contract: ————.

Patent No. 9. Issued Jany. 9, 1885, for 156.29 acres of land described above.

Contract No. 2,896.

Issued Nov. 12th, 1883. To H. J. Stevenson.

For lots 9 and 10, sec. 9, T. 2 S., R. 6 W., S. B. M.

Sixty-seven 02/100 (67.02) acres.

Agreed pur. price, $201.06. Pur. price paid, $201.06. Int. paid, $58.49.

Deed issued Feb. 1, 1889, to A. G. Patton.

Present owner of contract, ————.

Patent No. 9. Issued Jany. 9, 1885, for 67.02 acres of land described above.

Contract No. 11,422.

Issued April 7th, 1896. To Mrs. Mary E. Comstock.

For N. W. 1/4 of S. E. 1/4, sec. 1, T. 2 S., R. 6 W., S. B. M. (This tract is described twice in the bill of complaint.)

Forty 00/100 (40.00) acres.

Agreed pur. price, $100.00. Pur. price paid, $100.00. Int. paid, $ ——.

Quitclaim deed issued May 2, 1896, to Mary E. Comstock.

Present owner of contract: ————.

Patent No. —. Issue ————, for —— acres of land described above.

Contract No. 10,193.

Issued Oct. 23, 1889. To Charles E. Mosher.

For lots 1 and 2 and N. 1/2 of N. E. 1/4, sec. 17, T. 2 S., R. 6 W., S. B. M.

One hundred and thirty-one 09/100 (131.09) acres.

Agreed pur. price, $786.54. Pur. price paid, $786.54. Int. paid, $223.31.

Deed issued Nov. 21, 1894, to Charles E. Mosher.

Present owner of contract: ————.

Patent No. 25. Issued Aug. 15, 1894, for 131.09 acres of land described above.

Contract No. 10,123.

Issued July 5, 1889. To Mrs. Kate Bryant McVay.

For lots 3, 4, 5 and 7, S 1/2 of N. W. 1/4, sec. 17, T. 2 S., R. 6 W., S. B. M.

One hundred and seventy-nine 78/100 (179.78) acres.

Agreed pur. price, $1,078.68. Pur. price paid, $1,078.68. Int. paid, $375.72.

Deed issued Sept. 25, 1895, to Mrs. Kate Bryant McVay.

Present owner of contract: ———.

Patent No. 25. Issued Aug. 15, 1894, for 179.78 acres of land described above.

Contract No. 10,566.

Issued Nov. 10, 1890. To Adam Willhart.

For lot 1, sec. 19, T. 2 S., R. 6 W., S. B. M.

Eight" (8") acres.

Agreed pur. price ,$81.10. Pur. price paid, $81.10. Int. paid, $—

Deed issued Oct. 20, 1894, to Adam Willhart.

Present owner of contract: ———

Patent No. 25. Issued Aug. 15, 1894, for 8" acres of land described above.

[Endorsed]: United States vs. S. P. R. R. Co., et al. No. 979. Defendants' Exhibit No. 1. Stephen Potter, Special Examiner.

Defendants' Exhibit No. 2.

Deed No. ———.

To All to Whom These Presents Shall Come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, Trustees of all the lands of the said South-

ern Pacific Railroad Company, lying in the State of California, which remained unsold on the first day of April, A. D. 1875, send greeting:

Whereas, on the first day of April A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G; Series A to consist of thirteen thousand bonds for one thousand dollars each; numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand, and one to seventeen thousand, both inclusive; Series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; Series G. to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand both inclusive. All of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series A to bear date April

first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Railroad Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars:

And whereas, said Deed of Trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said Railroad Company and the said trustees; and that when such sales had been made, and the purchase money fully paid, the said company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or encumbrance for or on account of said bonds, or any other debt or obligation of the said Railroad Company.

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3d day of April, 1883, the said D. O. Mills the remaining trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing of the city of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Rail-

road Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of trustee under said deed of trust.

And whereas, said deed of trust further provided, that, for the sake of convenience in making said conveyances, the said trustees should have power to act by attorney, duly nominated and appointed by them jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their name by such attorney should have the same force and effect as if made by them in person.

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney, duly acknowledged and recorded as aforesaid, Jerome Madden of the city and county of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them, as aforesaid;

And whereas, the said Railroad Company contracted to sell the lands hereinafter described, pursuant to the foregoing conditions, to ——— for the sum of —— dollars, which sum has been fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid.

Now, therefore, in consideration of the premises, and the said sum of ——— dollars the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and convey to the said ——— and to ——— heirs and assigns, the following described tract of land situate, lying and being in the county of ———, and State of California, to wit: ——— of Section No. ——— in township ———, of Range ——— base and meridian, containing ——— acres, according to the United States Surveys, together with all the privileges and appurtenances thereunto appertaining and belonging; excepting and reserving all liability on the part of the Southern Pacific Railroad Company for taxes thereon since ——— 18——, the said purchaser —— having heretofore agreed with said company to pay the same, ——— and also reserving all claim of the United States to said tract ——— as mineral lands.

To have and to hold, the aforesaid premises, to the said ——— heirs and assigns, to —— and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company, has caused its name to be signed to these presents by its president and secretary, and its corporate seal to be hereunto affixed; and the said

D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden, have hereunto subscribed their names and affixed their seals, this ——— day of ———, A. D. 189——.

SOUTHERN PACIFIC RAILROAD COMPANY.

[Seal]

By ———————,

Its President.

By ———————,

Its Secretary.

———————, [Seal]

———————, [Seal]

Trustees.

By ———————,

Their Joint Attorney in Fact.

State of California,
City and County of San Francisco. } ss.

On this ——— day of ———, in the year one thousand eight hundred and ninety———, before me, ——— a notary public in and for said city and county of San Francisco, State of California, personally appeared ———, known to me to be the president, and ——— known to me to be the secretary, of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation

executed the same; also, on this the day aforesaid before me, the notary public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the attorney in fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney in fact.

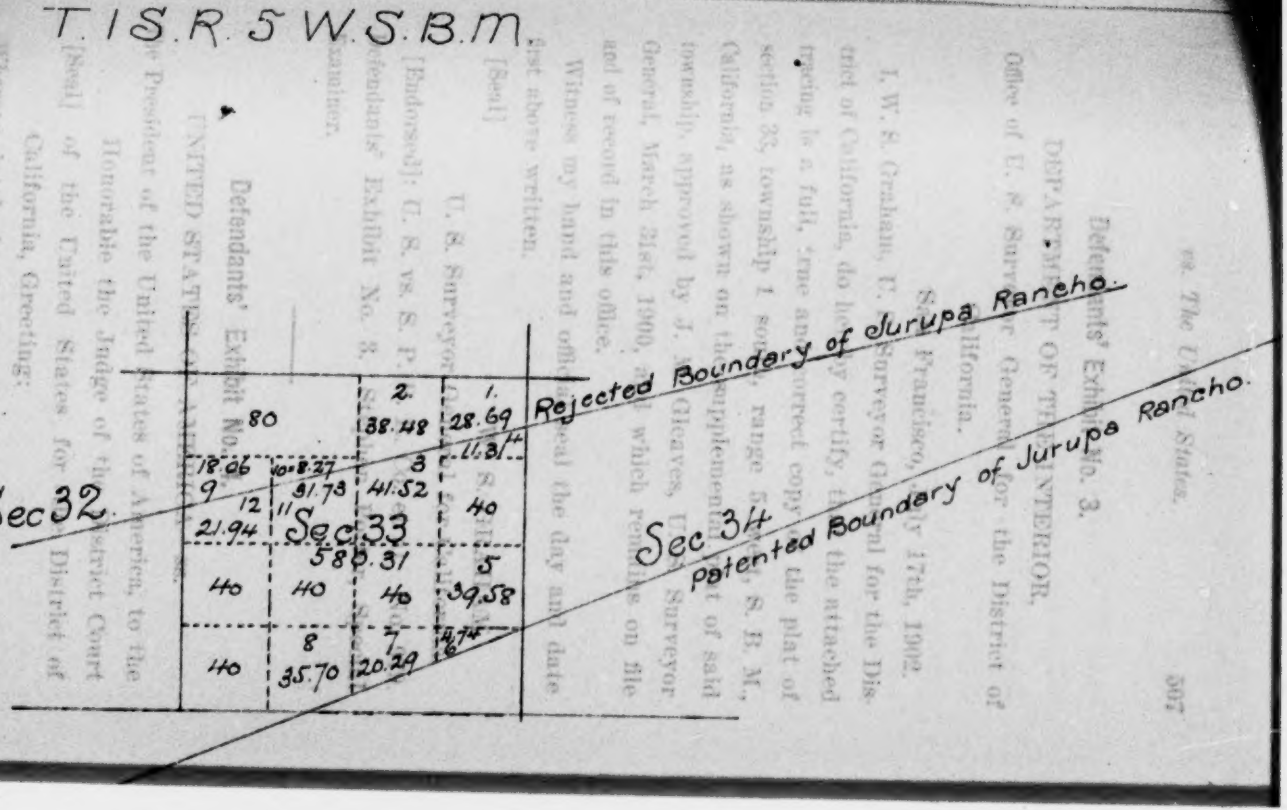
In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, State of California, on the day and year above written.

[Seal] ————————,

Notary Public in and for the City and County of San Francisco, and State of California.

[Endorsed]: Deed No. ——. Southern Pacific Railroad Co., D. O. Mills and Gerrit L. Lansing, trustees, to ——— deed. Dated ———, 189——.

[Endorsed]: U. S. vs. S. P. R. R. Co. et al. No. 979. Defendants' Exhibit No. 2. Stephen Potter, Special Examiner.


T. 1 S. R. 5 W. S. B. M.
Rejected Boundary of Jurupa Rancho.
Patented Boundary of Jurupa Rancho.
Sec 32
Sec 33
Sec 34
80
2.
38.48
1.
28.69
11.31
18.06
10-8.27
3
9
12
11
91.73
41.52
40
21.94
580.31
40
40
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5
39.58
8
7
4.74
40
35.70
20.29
6

executed the same; and on this the day aforesaid before me, the notary public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney in fact.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, State of California, on the day and year above written.

[Seal] ——————————

Notary Public in and for the City and County of San Francisco, and State of California.

[Endorsed]: Deed No. —— Southern Pacific Co. to D. O. Mills and Gerrit L. Lansing, trustees. Dated ——, 189—.

[Endorsed]: U. S. vs. S. P. R. R. Co. et al. No. —. Defendants' Exhibit No. 2. Stephen Potter, Special Examiner.

Defendants' Exhibit No. 3.

DEPARTMENT OF THE INTERIOR,
Office of U. S. Surveyor General for the District of California.

San Francisco, July 17th, 1902.

I, W. S. Graham, U. S. Surveyor General for the District of California, do hereby certify, that the attached tracing is a full, true and correct copy of the plat of section 33, township 1 south, range 5 west, S. B. M., California, as shown on the supplemental plat of said township, approved by J. M. Gleaves, U. S. Surveyor General, March 31st, 1900, and which remains on file and of record in this office.

Witness my hand and official seal the day and date first above written.

[Seal] W. S. GRAHAM,
U. S. Surveyor General for California.

[Endorsed]: U. S. vs. S. P. R. R. Co. et al. No. 979. Defendants' Exhibit No. 3. Stephen Potter, Special Examiner.

Defendants' Exhibit No. 4.

UNITED STATES OF AMERICA—ss.

The President of the United States of America, to the Honorable the Judge of the District Court [Seal] of the United States for the District of California, Greeting:

Whereas, lately in the District Court of the United States for the District of California, before you, in a

cause between the United States and Abel Stearns, substituted for Juan Bandini, wherein the decree of the said District Court entered in said cause was in favor of the said Abel Stearns, substituted for Juan Bandini, and against the said United States. Whereupon the said United States prayed an appeal to the Supreme Court of the United States, as by the inspection of the certificate of the clerk of the said District Court under the seal of the said Court, which was brought into the Supreme Court of the United States agreeably to the act of Congress, and the rules of the said Supreme Court in such case made and provided, fully and at large appears. And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and seventy-four, the said cause came on to be heard before the said Supreme Court, and it appearing that the said appellant has failed to have its cause filed and docketed in conformity to the rules of this Court—it is now here ordered, adjudged, and decreed by this Court, that this appeal, from the District Court of the United States for the District of California, be, and the same is hereby docketed and dismissed.

And it is further ordered that this cause be, and the same is hereby, remanded to the said District Court.

January 8th, 1875.

You, therefore, are hereby commanded that such proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable Morrison R. Waite, Chief Justice of said Supreme Court, the ——— day of February, in the year of our Lord one thousand eight hundred and seventy-five.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

[Endorsed]: Presented and filed in open court on motion of L. D. Latimer, Esq., Attorney for Claimant, this 2d day of March, A. D. 1875. Edw'd B. Cotter, Clerk U. S. Dist. Court, Dist. of Cal. By A. D. Grimwood, Deputy Clerk.

I, George E. Morse, clerk of the District Court of the United States for the Northern District of California, do hereby certify the foregoing to be a full, true and correct copy of the mandate from the Supreme Court of the United States, in the case entitled: "The United States vs. Abel Stearns, substituted for Juan Bandini." Land Case No. 213, S. D., and now remaining on file and of record in my office.

Attest my hand and the seal of the said District Court this 15th day of July, A. D. 1902.

[Seal] GEO. E. MORSE,
Clerk.
By John Fonga,
Deputy Clerk.

[Endorsed]: U. S. vs. S. P. R. R. Co. et al. No. 979. Defendants' Exhibit No. 4. Stephen Potter, Special Examiner.

Defendants' Exhibit No. 5.

At a stated term of the District Court of the United States for the District of California, held at the courtroom in the city and county of San Francisco, on Tuesday, the 2d day of March, A. D. 1875.

Present: The Honorable E. W. HILLYER, Judge.

THE UNITED STATES,

vs.

ABEL STEARNS, Substituted for JUAN BANDINI.

Land Case No. 213, S. D. "Jurupa."

On motion of Lorenzo D. Latimer, Esq., attorney for claimant, who presents the mandate of the Supreme Court of the United States dismissing the appeal heretofore taken by the United States from the decree of the District Court confirming the claim herein, it is hereby ordered that the said mandate be filed herein, and that the claimant have leave to proceed under the decree of confirmation heretofore entered herein as under final decree.

I, George E. Morse, clerk of the District Court of the United States for the Northern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered, in the case entitled "The United States vs. Abel Stearns, Substituted for Juan Bandini," Land Case No. 213, S. D., and now remaining of record in my office.

Attest my hand and the seal of the said District Court this 15th day of July, A. D. 1902.

[Seal] GEO. E. MORSE,
Clerk.
By John Fonga,
Deputy Clerk.

[Endorsed]: U. S. vs. S. P. R. R. Co. et al. No. 979. Defendants' Exhibit No. 5. Stephen Potter, Special Examiner.

Defendants' Exhibit No. 6.

Date—Trustees.

This indenture, made and entered into this the first day of April, A. D. 1875, by and between the Southern Pacific Railroad Company, a railroad corporation, duly incorporated and organized under and in pursuance of the laws of the State of California, party of the first part, and D. O. Mills and Lloyd Tevis, of the city and county of San Francisco, California, parties of the second part, witnesseth: That—

Purpose of mortgage—Route of railroad—Property mortgaged includes land grants.

Whereas, the said party of the first part desires to complete the construction and equipment of its railroad and telegraph lines in the State of California, running from the city of San Francisco in a southerly and southeasterly direction by way of Carnadero Junction, Salinas Valley and Polonio Pass to the Colorado river, at or near the "Needles"; also from Carnadero Junction to

San Benito; also from Los Gatos Creek via Goshen, to the Junction with the first-mentioned line between Poso Creek and Kern river; also from the Junction near Tehachapi Pass via Los Angeles to the Texas Pacific Railroad near Fort Yuma; and also from Los Angeles to Wilmington on San Pedro Bay, aggregating eleven hundred and fifty miles of railroad and telegraph line, and to cancel its present bonded indebtedness for construction secured by a mortgage heretofore made and bearing date November first, eighteen hundred and seventy, and to that end intends and is about to issue its first mortgaged bonds upon said railroad and telegraph line, and its rolling stock, fixtures and franchises, and also upon the lands granted to it by Congress, by the act of Congress, entitled "An act granting lands to aid in the construction of a Railroad and Telegraph line from the states of Missouri and Arkansas to the Pacific Coast," approved July twenty-seventh, eighteen hundred and sixty-six, and the act entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March third, eighteen hundred and seventy-one, not sold or otherwise disposed of prior to the execution of this mortgage, aggregating as near as can be estimated eleven millions of acres; And—

Board of directors authorize mortgage to be made—Description of bonds.

Whereas, heretofore, to wit, on the nineteenth day of December, A. D. eighteen hundred and seventy-four, the Board of Directors of said Company, pursuant to the

Statute of the State of California in such cases made and provided, at a meeting of said board at which all the members thereof were present, did, by a resolution to that effect, which was unanimously adopted and passed, determine and direct that first mortgage bonds upon said railroad and telegraph line, its rolling stock, fixtures and franchises, and upon said hereinbefore described lands, to the number of forty-eight thousand (forty-four thousand of which shall be for one thousand dollars each, and four thousand of which shall be for the sum of five hundred dollars each), in seven series, to be designated by the letters of the alphabet, commencing with the letter "A," and followed by the succeeding letters in regular order to the letter "G," both inclusive, be prepared, executed and issued by the president and secretary of said company. Series "A" to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive, Series "B" to "F," both inclusive, consisting each of five thousand bonds, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive, and Series "G" consisting of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds being payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually. The said Series "A" to bear

date April first, eighteen hundred and seventy-five, and the said several succeeding Series to bear such dates respectively as the Board of Directors of said company may direct; all of said bonds aggregating the sum of forty-six millions of dollars; And

Whereas, the said Board of Directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further resolve, that the said series "A" of said bonds should be executed and issued in substantially the following form, and that the succeeding series of said bonds should be in a similar form, with the necessary changes to conform to said resolutions or orders, which form is as follows, to wit:

Form of deed—Rate of interest.

UNITED STATES OF AMERICA.

$1,000 in United States Gold Coin. (Vignette) In United States $1,000. Gold Coin.

FIRST MORTGAGE BOND.

No. ———. Series "A."

The Southern Pacific Railroad Company (of California), for value received, promises to pay one thousand dollars to Mark Hopkins, or bearer, in the city of New York thirty years from the date hereof, with interest thereon at the rate of six per centum per annum from said date, payable semi-annually on the first day of October next ensuing, and on the first day of April and October in each year thereafter, in the city of New York, on presentation and surrender of the respective coupons

hereunto annexed, both principal and interest payable in United States Gold Coin at par, dollar for dollar.

Series.

This bond is one of Series "A" of the first mortgage bonds issued and to be issued by the said Southern Pacific Railroad Company in seven series designated respectively by the letters of the alphabet, commencing with "A" and ending with "G," both inclusive, Series "A," consisting of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive. Series "B" to "F," both inclusive, consisting each of five thousand bonds for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive, and Series "G," consisting of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive. All of said bonds being payable thirty years after their respective date, with the interest at the rate of six per centum per annum, payable semi-annually.

Dates.

The said Series "A" to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the Board of Directors of said company may direct; all of said bonds aggregating the sum of forty-six millions of dollars.

No preference by reason of priority.

The holder of any of such bonds is to have no preferance over any other holder of any of said bonds by reason of any priority in date or the time of issuing the same or otherwise.

How secured.

All of said bonds are secured by a mortgage or deed of trust bearing even date with the bonds constituting Series "A," duly executed by said company to D. O. Mills and Lloyd Tevis, San Francisco, California, as Trustees, upon its railroad and telegraph lines in the State of California, running from the city of San Francisco in a southerly and southeasterly direction by way of Carnadero Junction, Salinas Valley and Polonio Pass to the Colorado river at or near the "Needles"; also from Carnadero Junction to San Benito; also from Los Gatos Creek via Goshen to the junction of the first-mentioned line between Posa Creek and Kern River; also from the junction near Tehachapi Pass via Los Angeles, to the Texas Pacific Railroad near Fort Yuma, and also from Los Angeles to Wilmington on San Pedro Bay, aggregating eleven hundred and fifty miles of railroad and telegraph line, with all the rolling stock, stations, fixtures and franchises for the permanent use thereof, and the appurtenances thereto now owned or held, or that may be hereafter required by said company for the permanent use of said railroad and telegraph lines.

Includes lands.

Also upon all the lands granted to said company by

the Congress of the United States, to aid it in the construction of said railroad and telegraph lines, not sold or otherwise disposed of prior to the execution of said mortgage, aggregating, as near as can be estimated, eleven millions of acres.

In testimony whereof, the Southern Pacific Railroad Company has caused its corporate seal to be hereunto affixed, and these presents to be signed by its President and Secretary, this first day of April, in the year of our Lord one thousand eight hundred and seventy-five.

_____,
President.

_____,
Secretary.

And whereas, the said Board of Directors, at the meeting aforesaid and in the manner and form, and by the vote aforesaid did further direct that to each of said bonds there should be attached sixty interest coupons, numbered respectively from one to sixty, inclusive, substantially in the following form, to wit:

Form of coupons.

$30.

Series A.

SOUTHERN PACIFIC RAILROAD COMPANY
of California.

Coupon Bond No. _____, No. _____,

THIRTY DOLLARS.

Interest due _____,

Payable in the City of New York in United States Gold Coin.

_____,
Secretary.

—with such changes in amount in the body and in the coupon as shall be necessary to conform to the order of the Board of Directors aforesaid, in regard to the several amounts or sums which are payable in each class of bonds; and

U. S. Government land grant.

Whereas, by an act of Congress of the United States of America, approved on the twenty-seventh day of July, A. D. eighteen hundred and sixty-six, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," there was granted to the said Southern Pacific Railroad Company, party of the first part, a large body of public lands of the United States, to wit: Every alternate section of public lands, designated by odd numbers, to the amount of ten alternate sections per mile on each side of the railroad and telegraph line of said company running from the bay of San Francisco to the southeasterly line of the State of California, being about six hundred and thirty-six miles, not sold, reserved, granted, or otherwise appropriated, and free from pre-emption, homestead, or other claims or rights at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office and such other alternate sections designated by odd numbers as aforesaid, and situated not more than ten miles beyond the limits of the said first alternate sections, which may be selected by said company in lieu of any of the sections first aforesaid which may have been sold, granted, re-

served, pre-empted, occupied as homesteads, or otherwise disposed of, or to which other rights may have attached, as provided in the act of Congress aforesaid for the purpose of aiding in the construction of the railroad and telegraph line of the said party of the first part; and

Act of Congress authorizing the company to construct lines to connect with Texas Pacific Railroad and Atlantic and Pacific Railroad.

Whereas, by an act of Congress of the United States of America, approved on the third day of March, eighteen hundred and seventy-one, entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," there was granted to the said Southern Pacific Railroad Company the authority to construct a line of railroad from a point near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, with the same rights, land grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to and imposed upon the said Southern Pacific Railroad Company, of California, by the aforesaid act of July, twenty-seventh, eighteen hundred and sixty-six, before recited subject to the rights, present and prospective, of the Atlantic and Pacific Railroad Company, which said last line of road is of the length of three hundred and fifty-six and seven one-hundredths miles; and

Mortgage to be executed to trustees.

Whereas, the said Board of Directors, at the meeting

aforesaid, and in the manner and form, and by the vote aforesaid, did further direct that, to secure the payment of said bonds, a first mortgage upon said road and its rolling stock, stations, fixtures, right of way and franchises, and the lands aforesaid granted by said acts of Congress, not sold or otherwise disposed of, or contracted to be sold, as shown by the books of said company, should be executed under the corporate seal of said company, and be signed by its President and Secretary, to D. O. Mills and Lloyd Tevis, both of the city and county of San Francisco, State of California, as Trustees for the holders of said bonds; and

Sinking fund $100,000 yearly commencing 1882—Redemption of bonds.

Whereas, said Board of Directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further direct that a sinking fund should be created for the redemption and payment of said bonds, by setting apart the sum of one hundred thousand dollars of the net income of said road in the year eighteen hundred and eighty-two and each year thereafter until all of said bonds, principal and interest, shall have been redeemed or paid, in trust, to be loaned out at interest, upon good securities, or otherwise invested under the order and direction of said Board of Directors, or used to redeem said bonds as often as one hundred thousand dollars shall come into the Sinking Fund, in which case notice shall be published in one paper in the city of San Francisco and two papers in New York City,

that bonds will be redeemed at a price not exceeding their par value, and inviting bids for the surrender thereof at prices to be named, not exceeding the par value of said bonds; the lowest bids less than par to be accepted, and bonds redeemed to the extent of the money in the sinking fund.

Description of property conveyed to trustees.

Now, therefore, this indenture witnesseth, that the said Southern Pacific Railroad Company, for the better securing of the payment of the principal and interest of the said first mortgage bonds, and in consideration also of the sum of one dollar, to it in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and aliened, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, convey and confirm unto the said parties of the second part, and to their successors duly appointed for the execution of the trusts herein set forth, the following property now or hereafter constituted, purchased, acquired, held in possession and owned by said company, to wit: The whole of the railroad and telegraph line of the said company, running from the city of San Francisco, in the State of California, in a southerly and southeasterly direction, by way of Carnadero Junction, Salinas Valley and Polonio Pass, to the Colorado River, at or near the "Needles"; also, from Carnadero Junction to San Benito; also, from Los Gatos Creek, via Goshen, to the Junction with the first mentioned line, between Poso Creek and Kern River; also,

from the Junction near Tehachapi Pass, via Los Angeles, to the Texas Pacific Railroad near Fort Yuma and also from Los Angeles to Wilmington, on San Pedro Bay, aggregating eleven hundred and fifty miles of railroad and telegraph lines, including all the rights of way, roadway, track and tracks, together with all the superstructures, depots, depot grounds, station houses, watering places, workshops, machine-shops, machinery, sidetracks, turnouts, turntables, weighing scales, locomotives, tenders, cars, rolling stock of all kinds, full equipments, fixtures, tools and all other property which may be necessarily or ordinarily used in operating or repairing the said raiload, including all of the said property, which is now or may hereafter, in whole or in part, be construced or completed, purchased, acquired, held, or owned by the said company, pertaining to said railroad, and all the corporate rights, privileges and franchises of said company, pertaining to said road, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging and appertaining, and the reversion and reversions, remainder and remainders, rents, incomes, issues and profits thereof, with all the rights, titles, interests, estate, property, succession, claim and demand in law or equity of the said party of the first part, of, in and to the same or any part and parcel thereof; to have, and to hold the above granted and described premises, property and franchises, with the appurtenances, unto the said parties of the second part, and to the survivor of them, and to their successors, duly appointed, upon trust and for the use and benefit of the

person or persons, body or bodies, politic or corporate, who shall have become, or be from time to time, holders of the said "first mortgage bonds," or any of them. Provided, always, and these presents are upon the express condition that if the said party of the first part, or its successors, shall well and truly pay, or cause or procure to be paid unto the holders, from time to time, of said bonds, and each and every one of them, the said sums of money secured to be paid by the said bonds, and the interest coupons attached thereto, at the places and times, and in the manner set forth in the said bonds, according to the true intent and meaning thereof, then these presents, and all the property, estate, right, franchises and privileges herein and hereby granted and conveyed, shall cease, determine and be void.

Proceedings in event of default in payment.

But if default shall be made in the payment of the said sums of money specified in said bonds, or in the payment of said interest coupons, or either of them, or any part thereof, and if the same shall remain unpaid for the period of six months from and after the time when the same should have been paid, according to the terms of said bonds, then the said parties of the second part, or either of them, upon the refusal of the other, or their successors in said trust, by themselves, or their agents, or servants, in that behalf, may, upon request of the holder or holders of not less than one-fourth of said bonds, on which the interest or principal shall so be and have so remained in default, as aforesaid, enter into and upon and take possession of all, or in their or his discre-

tion, any part of the said premises and property hereinbefore described, and work and operate the said railroad, and receive the income, receipts and profits thereof, and out of the same pay: First, the expense of running and operating the same, including therein such reasonable compensation as they or he may allow to the several persons employed or engaged in the running and superintendence of the same, and a reasonable compensation to the parties of the second part, or their successors, or such of them as shall act in the premises, for their or his care, diligence and responsibility in the premises. Second, the expenses of keeping the said road the appurtenances, the locomotives and the rolling stock thereof in good and sufficient repair, to prevent deterioration in the value thereof, and all other reasonable and proper charges and expenses of the care and management thereof. And third, pay, as far as the same will suffice, all interests and principal, if any, which may be due on said bonds; and in case of any deficiency, to apply said receipts, after the payment of all said charges and expenses, to the payment thereof, ratably, without preferance of any kind, or the said parties of the second part may in such case foreclose this mortgage, and sell and dispose of, according to law, all the rights, property, privileges, franchises, real and personal, with the appurtenances herein and hereby granted, or so much thereof as may be necessary, and out of the money arising from such sale, pay: First, the costs, and charges, and expenses of the foreclosure and sale, including therein reasonable counsel fees for conducting said pro-

ceedings to be allowed and fixed by the court, but not exceeding thirty thousand dollars. Second, any expenses, costs and charges of the execution of the trust previously incurred and remaining unpaid. Third, a reasonable compensation to the trustees, or one of them, who may act, for their or his care, trouble and service in completing the execution of his trust and the distribution of the proceeds of sale, to be fixed by the court, but not exceeding twenty thousand dollars. And fourth, to distribute the residue of said preceeds among the holders of said bonds, in proportion to their several interests, until all have been paid in full, principal and accrued interests.

Proceeds from sale of depot, lands, etc., not needed for such purpose, may be sold and proceeds applied to redemption of bonds.

And the said party of the first part hereby covenants and agrees that if, at any time, any lands now used for depot or shop purposes, or right of way, or water, or any lands not now used, but which may be hereafter used for such purposes, shall, for any cause, cease to be needed or used by said party of the first part for such purposes, the said parties of the second part may sell the same at the price to be agreed upon by the parties of the first and second parts, and apply the money realized from such sale or sales to the redemption of said bonds in the manner hereinafter provided in the case of money realized from the sale of lands granted by the United States to the said party of the first part.

Company to pay all taxes, assessments, etc., or in default Trustees may pay and receive 7% interest on such payments.

And the said party of the first part hereby agrees and covenants to and with the said parties of the second part, and their successors in said trust, that it will pay all ordinary and extraordinary taxes, assessments, and other public burdens and charges which shall or may be imposed upon the property herein described and hereby mortgaged, and every part thereof, and the said parties of the second part, the survivor of them, or their successors in said trust, or any one or more of the holders of said bonds, may in case of default of the said party of the first part in this behalf, pay and discharge the same, and any other lien or encumbrance upon said property, which may in any way, either in law or equity, be or become in effect a charge or lien thereon, prior to these presents, or to which this mortgage may be subject or subordinate, and for all payments thus made the parties so making the same shall be allowed interest thereon at the rate of seven per centum per annum, and such payments, with the interest thereon, shall be and are hereby secured to them by these presents, and declared to be payable and collectible in the same sort of currency of money wherein they shall have been paid, and the same shall be payable by said party of the first part to said parties of the second part, upon demand in trust for the party or parties paying the same, and may be paid out of the proceeds of the sale of said property and franchises hereinbefore provided.

Will execute any further conveyances required—

Compensation to trustees.

And the said party of the first part hereby further covenants and agrees to and with the said parties of the second part, and their successors in said trust, that they will at any and at all times hereafter, upon the request of the said parties of the second part, execute, acknowledge and deliver to the said parties of the second part, all and every such further, necessary and reasonable conveyances and assurances of the said premises or any part thereof, as may by the parties of the second part, or the survivor of them, or his or their successors in the trust hereby created, be reasonably advised or required for more fully carrying into effect the objects of this conveyance, and the said parties of the second part, and their successors in said trust, shall be entitled to receive a just and proper compensation for all services rendered by them in the discharge of said trust, and the same shall be deemed to be secured hereby.

Agents of trustees.

And it is hereby stipulated and agreed that the said parties of the second part, and their successors in said trust, shall not be responsible for the acts or omissions of any agent or agents employed by him or them, in any manner, in and about the execution of the trust hereby created when such agent or agents are selected with reasonable discretion; or with the approbation, or knowledge and without the express disapprobation of said party of the first part, nor shall either of the

said parties of the second part be responsible for any act or omission of the other in the execution of said trust.

Conveyance of land to trustees.

And, therefore, this indenture further witnesseth: That the said party of the first part, for the purpose of securing the payment of the sums of money mentioned in said bonds, and the interest thereon, and in consideration of the premises, and also for and in consideration of the sum of one dollar to the said party of the first part in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, enfeoffed, conveyed and confirmed, and by these presents does grant, bargain, sell, release, enfeoff, convey and confirm unto the said parties of the second part, as trustees, and to their successors and survivors, and their assigns forever.

Reserved lands.

All and singular, the said several sections of land so as aforesaid granted by said acts of Congress; and also all the estate, right, title, interest, claim and demand whatsoever, at law or in equity, of, in, or to the same, or any part or parcel thereof, which the said party of the first part now has, holds, owns, or is entitled to, or hereafter may or shall acquire, have, hold, own, or be or become entitled to by force of virtue of the said acts of Congress; saving, excepting, and reserving all parts and parcels of said lands which have been sold or contracted to be sold or disposed of heretofore, or which

are or shall be included in the right of way of the said railroads and telegraph lines of the said company, as defined and granted by the acts of Congress aforesaid, or used for the construction or operation thereof, or for the track, yards, depot grounds, buildings or erections thereof.

To have and to hold all and singular the lands hereby granted or intended to be granted, and each and every part and parcel thereof, with the appurtenances thereunto belonging, unto the said parties of the second part, and their successors and survivor, and their assigns forever, as trustees, for the uses and purposes, and upon the trusts, terms, conditions, and agreements in this indenture set forth and declared.

Lands shall revert to and rest in the S. P. R. R. if ——.

Provided, always, and these presents are upon the express condition, that if the said party of the first part shall well and truly pay, or cause to be paid, to the holders of said bonds, and every of them, the principal sums of money therein mentioned, according to the tenor thereof with the interest thereon, at the times and in the manner hereinbefore provided, according to the true intent and meaning of these presents, then and from thenceforth this indenture and the estate hereby granted shall cease and determine, and all the right, title and interest in any and all property hereby conveyed to the parties of the second part, not then disposed of under the powers hereby conferred, shall revert to and vest in the said party of the first part.

Land to be under the control of S. P. R. R.—Payments to be made to trustees—Land to be graded, etc.

This indenture further witnesseth, that these presents and the said bonds are made, executed, and delivered upon the trusts, terms, conditions and agreements following, that is to say: That all the lands hereinabove conveyed and mortgaged shall be under the sole and exclusive management and control of the said party of the first part, who shall have full power and authority to make contracts for the sale of the same at such price, on such credit or terms of payment, and such other conditions as shall be agreed on by the said parties of the first and second parts, and as shall seem to them best calculated to secure the payment in full of all the bonds issued as hereinbefore provided, until entry of foreclosure by the trustees, as hereinafter provided. But no title to any tract of land, contracted to be sold by the said party of the first part, shall be given until the whole of the purchase money of said contract shall be paid to said parties of the second part, or their successors or survivor, in cash or in said bonds, or overdue coupons thereof. And for this purpose it is agreed that the said party of the first part and said trustees shall cause all such lands, as they shall from time to time become subject to sale, to be carefully examined, and surveyed, and shall affix to each tract or parcel such price as in their judgment shall be most judicious, having in view the interests of all parties; and said lands shall be and remain at all times thereafter open for sale to any person who

may desire to purchase and pay therefor; the prices being, nevertheless, at all times subject to revision and alteration by the said parties; and the party of the first part may reserve from sale any lands necessary for depot grounds, or other purposes connected with the construction or operation of the said railroad or telegraph.

Lands may be paid for in bonds and overdue coupons—Trustees may convey land by power of attorney—Residence of such attorney.

The purchaser of any such land shall be at liberty to pay for the same in the aforesaid bonds or overdue coupons at par; and when any tract or parcel of said lands shall have been purchased and paid for, either in bonds, coupons, or cash, as hereinbefore provided, the same shall be conveyed by the said parties of the first and second parts to the purchaser, in fee simple, and shall by such conveyance be absolutely and forever released from any and all lien or encumbrance, for or on account of said bonds, or any other debt or obligation of the said party of the first part. Provided, that for the sake of convenience in making said conveyances, the said trustees shall have power to act by attorney, duly nominated and appointed by them, jointly, by letter of attorney, which shall be duly acknowledged and recorded in each and all of the counties in which said lands or any part thereof are situated; and all deeds made in their names by such attorney shall have the same force and effect as if made by them in person. Provided, further, that the attor-

ney so appointed shall be a resident of the city of San Francisco, in the State of California, and shall reside within convenient reach of the party of the first part.

Trustees to cancel bonds and coupons.

The said trustees shall and will cancel and discharge each and every bond and the coupons thereon, and all overdue coupons, which they may receive in payment for land, or by purchase, by defacing the seal of the corporation, perforating the signature of the president and secretary and drawing lines across each of the interest coupons, on receipt thereof; and all bonds and coupons received in payment for lands, as aforesaid, shall, when so canceled, be delivered to the said party of the first part.

Proceeds of sales of lands shall be applied to the purchase of bonds.

The said trustees shall apply the proceeds of the sales made by them of lands hereby conveyed, to the sole and exclusive purpose of the payment of the bonds provided for in, and issued in conformity to the terms of this indenture.

How bonds shall be purchased.

And for such purpose all such avails shall, from time to time, as the same are realized, be used in the purchase of such bonds in the market, to be canceled, so long as purchases thereof can be made at par; and whenever such bonds cannot be purchased at that rate, said trustees shall advertise for proposals to sell such bonds to them in two newspapers published in the

city of New York, and one newspaper published in the city of San Francisco; and after receiving such proposals they shall have power to purchase such bonds at the lowest terms so offered.

The said party of the first part does hereby covenant and agree to pay to the holders of said bonds respectively, the said principal sums of money therein mentioned and the interest thereof as aforesaid.

In event of default in payment for six months, trustees may foreclose mortgage and dispose of lands at public auction sufficient to discharge all arrears.

If any default shall be made in the payment either of principal or interest on any of said bonds for six months, after demand at the place of payment when the same shall become due, then the said trustees may on being requested by the holders of at least one hundred thousand dollars of such bonds, enter into and take possession of any of the lands above conveyed, and foreclose this mortgage, and may sell at public auction so much of said lands as may be necessary to discharge all arrears of such interest, and apply the proceeds, after deducting the costs, charges, and expenses of such entry, foreclosure and sale, to the payment of such arrears of interest. If any such default shall continue for one year from the time of such demand and refusal, the principal sum of all bonds then outstanding shall become due and payable, and the said trustees may enter into and take possession of all the lands above by these presents mortgaged or conveyed, foreclose this mortgage and sell at public auction all said lands or so

much thereof as may be necessary, first giving at least six months previous notice of the time and place of sale in at least one newspaper published in the city of New York, and in one published in each of the cities of San Francisco, Sacramento, Los Angeles and San Diego; and they shall apply the proceeds thereof, after deducting the costs, charges and expenses of such last-mentioned entry, foreclosure and sale, to the payment of all said bonds, then outstanding, and the interest accrued thereon, rendering the surplus, if any there shall be, unto the said party of the first part. In case of any sale upon any such foreclosure or at any such public auction, the said trustees shall make, execute and deliver a conveyance of the said lands so sold, which shall convey to the purchasers all the rights and privileges of the said party of the first part, in and to the property so sold, to the same extent as the same shall have been previously enjoyed and held by the said party of the first part.

Foreclosure proceedings for interest to cease if interest is subsequently paid—How vacancy in trustees is to be filled.

If after any such entry shall be made or any such foreclosure proceedings shall be commenced for the satisfying of interest only, as above provided, and before the lands are sold thereon, the said party of the first part shall pay and discharge such interest and deliver the coupons therefor to the said trustees, and pay all the costs, charges and expenses incurred in such entry and foreclosure and the proceedings there-

on; then and in every such case the said trustees shall discontinue their proceedings thereon, and restore to the said party of the first part all of such lands to be held subject to the above conveyance and mortgage, and subject to all the provisions, terms and conditions of these presents, in like manner as if such entry had not been made, nor such foreclosure proceedings commenced. In case a vacancy shall happen in the number of trustees hereinbefore mentioned as parties of the second part in this indenture, or if one of them shall be temporarily absent, the remaining trustee shall, while said vacancy or absence exists, have all the rights, exercise all the powers and discharge all the duties devolving on the said trustee by said instrument. But as soon as it conveniently may be done, such vacancy shall be filled by the nomination by the remaining trustee of some proper person to fill such vacancy, which nomination shall be submitted to the Board of Directors of said company, and if approved by them, the person so nominated and approved, immediately shall become a trustee under this instrument. If said nomination is not approved, another person shall be nominated by said remaining trustee, and in like manner submitted for approval, and so on until three nominations shall have been made.

But if three successive nominations shall be made and none of them shall be approved by said board, said vacancy shall be filled by a committee of three persons, selected, one by said remaining trustee, one by said Board of Directors, and a third by the two thus se-

lected, and the person appointed trustee by a majority of the committee shall be and remain a trustee under this instrument, and the person regularly appointed a trustee to fill a vacancy in either of the forms above specified, shall, from and after his said appointment, and his acceptance of the appointment, become vested with the same estates, powers, rights and interests, and charged with the same duties and responsibilities as if he had been one of the original trustees, parties of the second part, named in and executing this instrument; and the prior remaining trustee may and shall execute such conveyances and instruments as may be proper or necessary to vest the same in such new trustee jointly with him, or to furnish evidence of such vesting. If at any time either of the said trustees shall resign his place as trustee by a proper deed in writing to that effect, and such resignation shall be accepted by the said party of the first part, then, and in every such case, the place of such resigning trustee thereupon shall become and be vacant.

Reconveyance by trustees upon payment of bonds and interest—Deposit of surplus moneys by trustees.

Whenever all the bonds which shall have been made and issued by the said party of the first part under and in conformity to the provisions of this indenture, with the interest thereon, together with all the expenses incurred by the said trustees in the execution of the trust herein and hereby created shall have been fully paid or satisfied, the said trustees shall reconvey to the said party of the first part all and singular the said

lands then in the hands of the said trustees, and not before that time sold or disposed of, in the execution of the trust hereby created. In case the said trustees shall at any time have any trust moneys on hand, received from the sale of the lands hereby conveyed which will not be required to meet any immediate liabilities of the company, to which said moneys are by these presents devoted, the said moneys shall be loaned on interest, or deposited on interest, with some bank or trust company in the city of San Francisco or Sacramento, subject to be drawn by checks signed by the trustees or such one of them as they may designate. All of the books of the said company, and of the trustees, relating to the lands hereby conveyed, shall be mutually open to the inspection of said company and said trustees. It shall be the duty of the said trustees to certify and deliver to the said party of the first part the said bonds, as the same from time to time shall be demanded, issued or used by the said party of the first part.

Responsibility of trustees.

And it is hereby mutually agreed by and between the parties hereto, that the said parties of the second part, and their survivor and successors, and their heirs, executors and administrators shall not be answerable for the acts, omissions or defaults of each other, nor for anything short of their own gross negligence or willful misfeasance.

Provisions of acts of Congress to be observed.

It is hereby declared by the parties to this indenture

that all the provisions of said acts of Congress, so far as they are applicable, are hereby made and shall be deemed and taken to be a part of this instrument; and the said provisions in all that concerns the sale and disposal of the said lands hereby conveyed to the parties of the second part are to be observed and strictly and faithfully carried out and fulfilled.

Will execute further instruments if necessary to secure payments of bonds.

And the said party of the first part covenants and agrees to and with the said parties of the second part, that the said party of the first part shall and will, at any and all times hereafter, and from time to time, execute, acknowledge and deliver, under its corporate seal, to the said parties of the second part, and their survivors or successors, all such other or further assurances, deeds, mortgages, obligations, transfers, indentures and instruments in writing, and shall and will do and perform all such other or further acts or things, as shall or may be necessary or proper, or as their counsel, learned in the law, shall deem necessary, proper or expedient for the better or more effectually securing upon the above conveyed and mortgaged premises the payment of the said bonds so to be issued, and the interest due and to grow due thereon in manner aforesaid, or for carrying into effect the true intent, design, objects and purposes of these presents. And the said parties of the second part hereby accept the trust created and declared by this instrument, and

agree to discharge the same pursuant to the provisions in that behalf herein contained.

In witness whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its president and secretary, and sealed with its corporate seal, and the above parties of the second part have hereunto set their hands and seal, the day and year first above written.

CHARLES CROCKER,
President Southern Pacific Railroad Company.
[Corporate Seal S. P. R. R. Co.]

J. L. WILLCUTT,
Secretary Southern Pacific Railroad Company.

We accept the trust declared in the foregoing instrument.

D. O. MILLS. [Seal]
LLOYD TEVIS, [Seal]
Trustees.

State of California,
City and County of San Francisco. } ss.

On this third (3d) day of July, in the year one thousand eight hundred and seventy-five (1875), before me, Charles J. Torbert, a notary public in and for the said city and county of San Francisco, State of California, duly commissioned and qualified, personally appeared Charles Crocker, known to me to be the president of the Southern Pacific Railroad Company, and J. L. Willcutt, known to me to be the secretary of the Southern Pacific Railroad Company, the corporation that executed

the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this 3d day of July, A. D. 1875.

[Notarial Seal] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

I, Charles J. Torbert, a notary public in and for the said city and county of San Francisco, State of California, residing in the city of San Francisco, duly commissioned and sworn, do certify that on the sixth (6th) day of July, in the year one thousand eight hundred and seventy-five (1875), personally appeared before me in the city and county of San Francisco, State of California, aforesaid, Charles Crocker, President of the "Southern Pacific Railroad Company," and J. L. Willcutt, Secretary of the "Southern Pacific Railroad Company," who are both personally known to me to be the said officers of the said "Southern Pacific Railroad Company," respectively, and the individuals described in and who have executed the foregoing instrument as such officers of said company, and they each severally and personally, then and there, acknowledged to me that they executed the said instrument as the free act and deed of the said "Southern Pacific Railroad Company," freely and voluntarily, and for the uses and purposes therein mentioned; and the said J. L. Will-

cutt, with whom I am personally acquainted, being by me duly sworn, did depose and say that he resides in the city and county of San Francisco, State of California; that he is and was secretary of the "Southern Pacific Railroad Company" at the date and time he executed the foregoing instrument; that he knows the corporate seal of said company, and is, and was at the date of said instrument, the legal custodian of said seal; that the seal affixed to the foregoing instrument was and is such corporate seal, and was by him so affixed by order of the Board of Directors of the said "Southern Pacific Railroad Company"; that he signed his name thereto as secretary of said company by the like order. And the said J. L. Willcutt further said that he was and is acquainted with Charles Crocker, and knows that said Charles Crocker is and was President of the "Southern Pacific Railroad Company" at the date of said instrument; that the signature of the said Charles Crocker subscribed to said instrument is in the genuine handwriting of the said Charles Crocker, and was thereto by him subscribed by the like order of the Board of Directors of said company, and in the presence of him, the said deponent.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, State of California, the 6th day of July, A. D. 1875.

[Notarial Seal] CHARLES J. TORBERT,

Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco, } ss.

On this seventh (7th) day of July, in the year one thousand eight hundred and seventy-five (1875), before me, Charles J. Torbert, a notary public in and for the said city and county of San Francisco, State of California, duly commissioned and qualified, personally appeared D. O. Mills and Lloyd Tevis, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, State of California, this 7th day of July, A. D. 1875.

[Notarial Seal] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

Filed for record at the request of D. W. Parkhurst, and recorded in office of the county recorder of San Mateo, County, July 8, 1875, at 5 P. M., in Liber 11 of Mortgages, at page 2 and following.

Witness my hand and seal of office.

Paid $22.50.

[Seal] GEO. H. RICE,
County Recorder.

By W. R. Thomas,
Deputy.

Filed for record at the request of D. W. Parkhurst, July 9th, A. D. 1875, at 9 o'clock, and 26 minutes, A. M., and recorded in Book 15 of Mortgages, at page 156, et seq., Records of the County of Santa Clara, in the State of California.

Witness my hand and seal of office.

Paid, $15.

[Seal] W. J. COLAHAN,
County Recorder.
By F. J. Saxe,
Deputy.

Filed for record at the request of D. W. Parkhurst, July 9th, A. D. 1875, at 8 o'clock, and 53 minutes P. M., and recorded in book 1, of Mortgages, at page 586, and following. Records of San Benito County, in the State of California.

Witness my hand and seal of office.

Fees, $15, paid.

[Seal] H. M. HAYES,
Co. Recorder.

Filed for record at the request of D. W. Parkhurst, July 10th, A. D. 1875, at 8 o'clock, and 10 minutes P. M., and recorded in volume 17, page 529, and following pages of the Mortgage Records of the County of Santa Cruz, in the State of California.

Witness my hand and seal of said county recorder.

Paid, $15.00.

[Seal] H. E. MAKINNEY,
County Recorder in and for Santa Cruz County.

Filed for record at the request of D. W. Parkhurst, July 12th, A. D. 1875, at 9 o'clock, and 55 minutes A. M., and recorded in book 1, of Mortgages, page 183, and following, records of the county of Monterey, in the State of California.

Witness my hand and seal of office.

Fees, $15, pd.

[Seal] HERBERT MILLS,
County Recorder.

Filed for record at the request of D. W. Parkhurst, July 13th, A. D. 1875, at six o'clock, and 25 minutes, P. M., and recorded in book "C," of Mortgages, page 540 et seq., Records of the County of San Luis Obispo, in the State of California.

Witness my hand and seal of office county recorder.

Fees, $15.

[Seal] CHAS. W. DANNA,
County Recorder.

Filed for record at the request of D. W. Parkhurst, July 14th, A. D. 1875, at 2 o'clock, and 20 minutes, P. M., and recorded in book "F," of Mortgages, pages 164 and following, Records of the County of Santa Barbara, in the State of California.

Witness my hand and seal of office of county recorder.

Fees, $15, pd.

[Seal] H. P. STONE,
County Recorder.
By J. O. B. Wentling,
Deputy.

Filed for record at the request of D. W. Parkhurst, July 16th, A. D. 1875, at 8 o'clock, and 40 minutes, A. M., and recorded in book 15, of Mortgages, page 600, et seq., Records of the County of Los Angeles, in the State of California.

Witness my hand and seal of office county recorder.

Fees, $15, pd.

[Seal]

J. W. GILLETTE,
County Recorder.
By D. S. Lovejoy,
Deputy.

Filed for record at the request of D. W. Parkhurst, July 19th, A. D., 1875, at nine o'clock, and 15 minutes A. M., and recorded in book, volume 2, of Mortgages, pages 217 and following, Records of the County of Kern, in the State of California.

Witness my hand and seal of office.

Fees, $15, pd.

[Seal]

F. W. CRAIG,
County Recorder.

Filed for record at the request of D. W. Parkhurst, Esq., July 20th, A. D., 1875, at 8 o'clock, and 15 minutes, P. M., and recorded in book "D" of Mortgages, pp. 310, et seq., Records of the County of Fresno, in the State of California.

Witness my hand and seal of office of county recorder.

Pd. $15.

[Seal]

A. M. CLARK,
County Recorder.
By C. L. Wainwright,
Deputy.

Filed for record at request of D. W. Parkhurst, July 21st, A. D. 1875, at 10 o'clock, and 30 minutes, A. M., and recorded in book "K" of Mortgages, page 1, et seq., Records of the County of Tulare, in the State of California.

Witness my hand and seal of office of county recorder.

Pd. $15.

[Seal] J. E. DENNY,
Recorder.
By John G. Knox,
Deputy.

Filed for record at the request of D. W. Parkhurst, July 23d, A. D. 1875, at 10 o'clock, and 40 minutes, P. M., and recorded in book "D" of Mortgages, 544, et seq., Records of the County of San Bernardino, in the State of California.

Witness my hand and seal of office of county recorder.

Pd. $15.00.

[Seal] SYDNEY P. WAITE,
County Recorder.
By R. S. Swing,
Deputy.

Filed for record at the request of D. W. Parkhurst, July 26th, A. D. 1875, at 10 o'clock and 20 minutes, A. M., and recorded in book No. 7, of Mortgages, pages 103, et seq., Records of the County of San Diego, in the State of California.

Witness my hand and seal of office of county recorder.

Fees, $15.

[Seal] A. S. GRANT,
County Recorder.
By E. G. Haight,
Deputy.

Filed for record at the request of D. W. Parkhurst, July 28th, A. D. 1875, at 24 minutes past 4 P. M., and recorded in book No. 2, of Mortgages, pages 46, et seq., Records of the County of Ventura, State of California.

Witness my hand and seal of office of county recorder.

Fees, $18.

[Seal] JOHN T. STOW,
County Recorder.

Recorded at request of D. W. Parkhurst, August 3d, A. D. 1875, at 1 P. M., in Liber 443, of Mortgages, page 309, in the office of the County Recorder of the city and county of San Francisco, State of California.

O. H. FRANK,
County Recorder.

Recorded at request of Wells, Fargo & Co., August 20, 1880, at 20 min. past 9 A. M., in book 1 of Mortgages, page 557, et seq. Records of Merced County.

$15.

[Seal] E. J. HAMILTON,
County Recorder.
By M. H. Walsh,
Deputy.

Recorded at request of Wells, Fargo & Co., August 23d, A. D. 1880, at 5 min. past 9 o'clock A. M., in vol. 15 of Mortgages, at pages 139, et seq., Records of Stanislaus County.

$15, paid.

[Seal] JOHN McCOY,
Recorder.

Recorded at request of J. L. Willcutt, September 6th, 1880, at 30 min. past 10 o'clock, A. M., in Liber 624 of Mortgages, page 305, in the office of the county recorder of the city and county of San Francisco, State of California.

[Seal] W. K. DIETRICH.
County Recorder.
Per Richard Blauvelt,
Deputy.

To the President and Board of Directors of the Southern Pacific Railroad Company, and All Other Persons Concerned:

Resignation of Lloyd Tevis, trustee.

Know ye, that I, Lloyd Tevis, one of the trustees under a certain indenture made and entered into on the first day of April, A. D. 1875, by and between the Southern Pacific Railroad Company, a railroad corporation, duly incorporated and organized under and in pursuance of the laws of the State of California, party of the first part, and D. O. Mills and Lloyd Tevis, of the city and county of San Francisco, California, parties of the second part, have this day resigned, and do here-

by resign the position of said trustee under said indenture, in pursuance of the provisions thereof.

In testimony whereof, I have hereunto set my hand and seal on this the 24th day of March, A. D. 1883.

LLOYD TEVIS. [Seal]

State of California,
City and County of San Francisco. } ss.

On this twenty-seventh (27th) day of March, in the year one thousand eight hundred and eighty-three (1883), before me, Charles J. Torbert, a notary public in and for the said city and county of San Francisco, State of California, duly commissioned and qualified personally appeared Lloyd Tevis, known to me to be the person whose name is subscribed to the above instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this twenty-seventh (27th) day of March, A. D. 1883.

[Notarial Seal] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

To the Southern Pacific Railroad Company and to Its Board of Directors:

Lloyd Tevis, of the city and county of San Francisco, one of the trustees named in a certain indenture made and entered into on the first day of April, 1875, between the Southern Pacific Railroad Company, party of the first part, and D. O. Mills and Lloyd Tevis, of the

city and county of San Francisco, parties of the second part, having duly resigned his place as trustee by proper deed in writing to that effect, and such resignation having been accepted by the party of the first part, and thereby the place of such resigning trustee having become and now is vacant—

Nomination of Gerrit L. Lansing for trustee submitted to the Board of Directors.

Therefore, I, the remaining trustee, in accordance with the provisions of said indenture in this respect, do hereby nominate Gerrit L. Lansing, a proper person to fill such vacancy, and do hereby submit to the Board of Directors of said company such nomination for the approval of said board.

Dated in New York this third day of April, A. D. 1883.

D. O. MILLS, [Seal]

Witness: EDWIN F. COREY.

State of New York,
City and County of New York. } ss.

Be it remembered, that on this third day of April, in the year one thousand eight hundred and eighty-three, before me, the undersigned, Edwin F. Corey, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of California, to take acknowledgment of deeds, etc., to be used or recorded therein, personally appeared D. O. Mills, known to me to be the person whose name is subscribed to the with-

in instrument, and he acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year first aforesaid.

[Commissioner's Seal] EDWIN F. COREY,
Commissioner for State of California, Office, 54 Wall Street, N. Y.

Whereas, on the 1st day of April, 1875, this Company conveyed all its railroad and telegraph lines, its rights of way, roadway, tracks and other property, including all its lands, to D. O. Mills and Lloyd Tevis, upon certain trusts therein declared;

And whereas, on the 24th day of March, 1883, said Lloyd Tevis resigned his trust under said conveyance;

And whereas, on 3d day of April, 1883, the said D. O. Mills, pursuant to the conditions of said trust, did nominate Gerrit L. Lansing, of the city of San Francisco and State of California, as a fit and proper person to fill the vacancy caused by the said resignation of the said Lloyd Tevis;

Nomination of Gerrit L. Lansing approved by the Board of Directors.

Now, therefore, it is ordered that the said nomination be approved and that the said Gerrit L. Lansing be and he is hereby appointed to fill said vacancy.

Witness the corporate seal of said Southern Pacific Railroad Company, and the hands of its President and

Secretary hereunto fixed and set, on this the 17th day of April, A. D. 1883..

[Corporate Seal S. P. R. R. Co.]

CHARLES CROCKER,
President.

J. L. WILLCUTT,
Secretary.

State of California,
City and County of San Francisco. } ss.

On this nineteenth (19th) day of April in the year one thousand eight hundred and eighty-three (1883), before me, Charles J. Torbert, a notary public in and for the said city and county of San Francisco, State of California, duly commissioned and qualified personally appeared Charles Crocker, known to me to be the president, and J. L. Willcutt, known to me to be the secretary of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this nineteenth (19th) day of April, A. D. 1883.

[Notarial Seal] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

Know all men by these presents: That whereas, on the first day of April, A. D. 1875, the Southern Pacific Railroad Company, a railroad corporation duly incorporated under and pursuant to the laws of the State of California, did, by an instrument in writing, convey all its railroad and telegraph lines, its rights of way, roadway, tracks and other property, including all its lands, to D. O. Mills and Lloyd Tevis, upon certain trusts declared in said conveyance;

And whereas, on the 24th day of March, 1883, said Lloyd Tevis resigned his trust under said conveyance;

And whereas, on the 3d day of April, 1883, the said D. O. Mills, pursuant to the conditons of said trust, did nominate Gerrit L. Lansing, of the city of San Francisco and State of California, as a fit and proper person to fill the vacancy caused by the said resignation of the said Lloyd Tevis;

Acceptance of Gerrit L. Lansing as trustee;

And whereas, on the 17th day of April, 1883, the Board of Directors of said Southern Pacific Railroad Company did approve the said nomination;

Now, therefore, I, the said Gerrit L. Lansing, pursuant to the provisions of said trust-mortgage, do hereby accept the trust created by said mortgage as the successor of said Lloyd Tevis.

In witness whereof, I have hereunto set my hand and affixed my seal this 18th day of April, A. D. 1883.

GERRIT L. LANSING. [Seal.]

State of California,
City and County of San Francisco. } ss.

On this nineteenth (19th) day of April, in the year one thousand eight hundred and eighty-three (1883), before me, Charles J. Torbert, a notary public in and for the said city and county of San Francisco, State of California, duly commissioned and qualified personally appeared Gerrit L. Lansing, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this nineteenth (19th) day of April, A. D. 1883.

[Notarial Seal] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

Filed for record at request of R. G. Oliver, May 22d, A. A. D. 1883, at 10 o'clock, A. M., and recorded in Book 17, of Mortgages, page 22, et seq., Records of the County of San Mateo, in the State of California.

Witness my hand and seal of county recorder.

[Seal] J. W. BICKNELL,
County Recorder.
By H. B. Thompson,
Deputy.

Filed for record at request of R. G. Oliver, May 22d, A. D. 1883, at 5 minutes past 2 o'clock, P. M., and recorded in Book "J" of Miscellaneous Records, pages 448 et seq.,

Records of the County of Santa Clara, in the State of California.

Witness my hand and seal of county recorder.

[Seal] J. M. PITMAN
County Recorder.
By. Geo. Fethersten,
Deputy.

Filed for record at the request of R. G. Oliver, May 23d, A. D. 1883, at 20 minutes past 9 o'clock, A. M., and recorded in Book 6 of Mortages, pages 528 and following Records of the County of San Benito, in the State of California.

Witness my hand and seal of county recorder.

[Seal] THOS. F. McMAHON,
County Recorder.
By Wm. McCarthy,
Deputy Recorder.

Filed for record at the request of R. G. Oliver, May 24th, A. D. 1883, at 50 minutes past 9 o'clock, A. M., and recorded in Volume 37 of Mortgages, at pages 1 and following, Records of the County of Santa Cruz, in the State of California.

Witness my hand and seal of county recorder.

[Seal] H. E. MAKINNEY,
County Recorder.

Filed for record at the request of R. G. Oliver, May 24th, 1883, at 40 minutes past 4 P. M., and recorded in Liber "S" of Mortgages, at pages 163 and following, Records of Monterey County, State of California.

Witness my hand and seal of county recorder.

[Seal] M. M. SPEEGLE,
County Recorder.

Filed for record at request of R. G. Oliver, May 26, A. D. 1883, at 4 o'clock and 5 minutes, P. M., and recorded in Book 1 of Mortgages, page 240 et seq., San Luis Obispo County Records, State of California.

Witness my hand and seal of county recorder.

[Seal] F. E. DARKE,
County Recorder.

Filed for record at the request of R. G. Oliver, May 31st, A. D. 1883, at 9 o'clock and 20 minutes, A. M., and recorded in Book B, of Miscellaneous Records, pages 446, et seq., Records of the County of Santa Barbara, in the State of Caifornia.

Witness my hand and seal of county recorder.

[Seal] H. STODDARD,
Recorder.

Filed for record at the request of R. G. Oliver, May 31st, A. D. 1883, at 4 o'clock and 30 minutes, P. M., and recorded in Book 2, Miscellaneous Records, pages 108 et seq., Records of the County of Ventura, in the State of California.

Witness my hand and seal of county recorder.

[Seal] JOHN J. STOW,
Recorder.
By Robt. W. Forth,
Deputy.

Filed for record at the request of R. G. Oliver, June 2d, 1883, at 43 minutes past 2 o'clock, P. M., and recorded in Book 50 of Mortgages, page 256 et seq., Records of Los Angeles County, State of California.

Witness my hand and seal of county recorder, Los Angeles Co., Cal.

[Seal] CHAS. E. MILES,
Recorder.
By W. B. Pritchard,
Deputy.

Filed for record at the request of R. G. Oliver, June 5th, A. D. 1883, at 40 minutes past 11 A. M., and recorded in Book "M" of Mortgages, pages 565 et seq., Records of the County of San Bernardino, in the State of California.

Witness my hand and seal of County Clerk, who is ex-officio county recorder.

[Seal] W. F. HOLCOMB,
County Recorder.
By E. A. Nisbet,
Deputy.

Filed for record at the request of R. G. Oliver, June 6th, A. D. 1883, at 10 o'clock and 5 minutes, A. M., and recorded in Book No. 12 of Mortgages, pages 1 et seq., Records of the County of San Diego, in the State of California, this June 6th, 1883, at 2 o'clock P. M.

Witness my hand and seal of county recorder.

[Seal] E. G. HAIGHT,
County Recorder.
By H. T. Christian,
Deputy.

Filed for record at the request of R. G. Oliver, June 9th, A. D. 1883, at 9 o'clock and 10 minutes, A. M., and Recorded in Book Vol. six (6) of Mortgages, pages 116 et seq., Records of the County of Kern, in the State of California.

Witness my hand and seal of county recorder.

[Seal] A. T. LIGHTNER,
County Recorder.

Filed for record at the request of R. G. Oliver, June 11th, A. D. 1883, at 9 o'clock and 40 minutes, A. M., and recorded in Book "S" of Mortgages, pages 612 et seq., Records of the County of Tulare, in the State of California.

Witness my hand and seal of county recorder.

[Seal] J. E. DENNY.
County Recorder.

Filed for record at the request of R. G. Oliver, June 12th, A. D. 1883, at 7 o'clock and 40 minutes, A. M., and Recorded in Book "O" of Mortgages, pages 43 et seq., Records of the County of Fresno, in the State of California.

Witness my hand and seal of county recorder.

[Seal] A. M. CLARK,
County Recorder.
By A. C. Williams,
Deputy Recorder.

Filed for record at the request of R. G. Oliver, June 12th, A. D. 1883, at 3 o'clock and 35 minutes, P. M., and

recorded in Book "A" Miscellaneous Records, pages 174 et seq., Records of the County of Merced, in the State of California.

Witness my hand and seal of county recorder.

[Seal] J. F. McSWAIN,
County Recorder.

Filed for record at the request of R. G. Oliver, June 13th A. D. 1883, at 10 o'clock and 30 minutes, A. M., recorded in Book Vol. Nineteen (19) of Mortgages, pages 308 et seq., Records of the County of Stanislaus, in the State of California.

Witness my hand and seal of county recorder.

[Seal] JOHN McCOY,
County Recorder.

Recorded in the office of the County Recorder of the City and County of San Francisco, June 15th, 1883, at 15 minutes past 12 o'clock, M. in Liber 45 of Miscellaneous, page 54, at the request of R. G. Oliver.

[Seal] WM. J. BRYAN,
County Recorder.
Per Henry Casey.
Deputy.

[Endorsed]: Trust Mortgage. Southern Pacific Railroad Co. to D. O. Mills and Lloyd Tevis, Trustees. Dated April 1st, 1875. Resignation of Lloyd Tevis and Appointment of Gerrit L. Lansing. Acceptance April 18th, 1883. U. S. vs. S. P. R. R. Co., et al. No. 979. Defendants' Exhibit No. 6. Stephen Potter, Special Examiner.

Defendants' Exhibit No. 7.

Indenture, made this fifteenth day of September, one thousand eight hundred and ninety-three, between the Southern Pacific Railroad Company, a railroad corporation organized and existing under the laws of the United States and of the State of California, party of the first part, the Southern Pacific Company, a corporation organized and existing under the laws of the State of Kentucky, and lessee of the railroads of said Southern Pacific Railroad Company, party of the second part, and the Central Trust Company of New York, a corporation organized and existing under the laws of the State of New York, party of the third part.

Whereas, The Southern Pacific Railroad Company, as it existed prior to the amalgamation and consolidation hereinafter mentioned to secure the payment of its bonds in the sum of $46,000,000 therein referred to, did heretofore, on or about, and under date of, the first day of April, 1875, make and execute its first mortgage or deed of trust to D. O. Mills and Lloyd Tevis on the whole of its railroad and telegraph line running from the city of San Francisco, in the State of California, in a southerly and southeasterly direction, by way of Carnadero Junction, Salinas Valley and Polonio Pass, to the Colorado River at or near the "Needles"; also from Carnadero Junction to San Benito; also from Los Gatos Creek via Goshen to the junction with the first mentioned line, between Poso Creek and Kern River; also from the junction near Tehachapi Pass via Los Angeles

to the Texas Pacific Railroad near Fort Yuma, and also from Los Angeles to Wilmington, on San Pedro Bay, aggregating eleven hundred and fifty (1,150) miles of railroad and telegraph line, more or less, and on the several sections of land granted to the Southern Pacific Railroad Company by the acts of Congress of July 27, 1866, and March 3, 1871, as stated in said mortgage, saving, excepting and reserving, however, all parts and parcels of said lands which had been sold or contracted to be sold or disposed of theretofore or which were or should be included in the right of way of said railroads and telegraph lines of said company as defined and granted by the acts of Congress aforesaid, or used for the construction or operation thereof, or for the track, yards, depot grounds, buildings or erections thereof.

And whereas, the Southern Pacific Branch Railway Company, did, prior to said amalgamation and consolidation, authorize the issuance of nine thousand of its fifty-year first mortgage bonds for one thousand dollars each, bearing date the first day of April, 1887, bearing interest at the rate of six per cent per annum, payable semi-annually, secured by a mortgage or deed of trust, bearing date the twenty-fourth day of November, 1886, to William E. Brown and Gerrit L. Lansing, trustees, and covering the whole of the railroad line of the said Southern Pacific Branch Railway Company, commencing at a point near San Miguel, in the county of San Luis Obispo, in the State of California, there connecting with the railroad of the Southern Pacific Railroad Company, and running from thence in a general southeasterly direction

through and into the counties of San Luis Obispo, Santa Barbara, Ventura and Los Angeles, to a connection with the railroad of the Southern Pacific Railroad Company, near Newhall, in said Los Angeles County, a distance of about two hundred and fifty miles, as near as may be, together with all the corporate rights of said Southern Pacific Branch Railway Company pertaining to said road, its appurtenances, etc.

And whereas, the Stockton and Copperopolis Railroad Company did, prior to said amalgamation and consolidation, issue its first mortgage bonds, bearing date the first day of January, 1875, and bearing interest at the rate of five per cent per annum, payable semi-annually, to the amount taken at their par value of five hundred thousand dollars, secured by mortgage or deed of trust to D. D. Colton and J. L. Willcutt, trustees, dated the first day of January, 1875, and covering the railroad of said Stockton and Copperopolis Railroad Company then constructed or thereafter to be constructed from a point in the city of Stockton, county of San Joaquin, to a point at or near Copperopolis, in the county of Calaveras, and all future extensions thereof.

And whereas, subsequent to the execution of the foregoing mortgages, by instrument in writing dated the fourth day of May, 1888, and executed pursuant to the laws of the State of California in such cases made and provided, the said Southern Pacific Railroad Company as theretofore existing, and the San Jose and Almaden Railroad Company, the Pajaro and Santa Cruz Railroad Company, the Monterey Railroad Company, the Monterey Ex-

tension Railroad Company, the said Southern Pacific Branch Railway Company, the San Pablo and Tulare Railroad Company, the San Pablo and Tulare Extension Railroad Company, the San Ramon Valley Railroad Company, the said Stockton and Copperopolis Railroad Company, the Stockton and Tulare Railroad Company, the San Joaquin Valley and Yosemite Railroad Company, the Los Angeles and San Diego Railroad Company, the Los Angeles and Independence Railroad Company, the Long Beach, Whittier and Los Angeles County Railroad Company, the Long Beach Railroad Company, the Southern Pacific Railroad Extension Company and the Ramona and San Bernardino Railroad Company (railroad corporations organized and existing under the laws of the State of California) amalgamated and consolidated their capital stocks, debts, properties, assets and franchises as authorized by the laws of said State.

And whereas, by force and effect of said amalgamation and consolidation, the said party of the first part has succeeded to all of the debts, properties, assets and franchises of said several railroad companies, and now holds and owns the several lines of railroad heretofore held and owned by them respectively, together with their respective properties, assets and franchises.

And whereas, bonds of said Southern Pacific Railroad Company, as it existed before said amalgamation and consolidation, issued under and secured by its said mortgage or deed of trust dated April 1, 1875, are still outstanding to the amount taken at their par or face value of $31,293,500.

And whereas, the party of the first part desires and intends, prior to or at the maturity of the said last-mentioned bonds of the Southern Pacific Railroad Company, issued under said mortgage of April 1, 1875, to retire and pay such bonds, or to arrange for their deposit as collateral security for the bonds to be issued under this indenture, so far as they have not been otherwise retired, and, when arrangements have been made for such deposit of all such bonds, to cause the same to be canceled and the mortgage securing the same to be satisfied of record as hereinafter provided.

And whereas, 3,578 of the bonds for one thousand dollars each of said Southern Pacific Branch Railway Company authorized to be issued under its said mortgage to William E. Brown and Gerrit L. Lansing, trustees, bearing date the twenty-fourth day of November, 1886, and numbered from 1 to 3,578, both inclusive (being bonds at the rate of thirty thousand dollars per mile for 119 26-100 miles of road constructed or acquired on the line of road formerly of said Southern Pacific Branch Railway Company), are now outstanding in the hands of third parties, where the same cannot now be controlled for deposit as security under this mortgage, but the remainder of such bonds, amounting at their par or face value to the sum of $5,422,000, are simultaneously with the execution hereof delivered to the trustee hereunder as security, as hereinafter provided, for the bonds to be issued under this indenture.

And whereas, the party of the first part desires and intends, as rapidly as the same can be done upon terms sat-

isfactory to it, to arrange for the deposit as collateral security for the bonds to be issued under this indenture, of the said 3,578 of the said mortgage bonds of said Southern Pacific Branch Railway Company, now outstanding in the hands of third parties as aforesaid, and when arrangements have been made for such deposit of all of such bonds to cause the same, and the remainder of such issue which simultaneously with the execution hereof are delivered to the trustee hereunder, to be canceled and the mortgage securing the same to be satisfied of record as hereinafter provided.

And whereas, the bonds of said Stockton and Copperopolis Railroad Company issued under and secured by its said mortgage or deed of trust dated January 1, 1875, are still outstanding to the amount taken at their par or face value of five hundred thousand dollars, but the party of the first part desires and intends, as rapidly as the same can be done upon terms satisfactory to it, to arrange for the deposit as collateral security hereunder of such bonds, and their ultimate cancellation and the satisfaction of the mortgage securing the same, as hereinafter provided.

And whereas, the party of the first part, after said amalgamation and consolidation, did, heretofore and on or about and under date of the 25th day of August, 1888, in order to secure the payment of bonds proposed to be issued by it as therein stated (of which bonds to the amount of their par value of $12,932,000 are now outstanding), make and execute a certain indenture of mortgage or deed of trust to the Central Trust Company of

New York, the party hereto of the third part, covering a portion of the properties hereinafter described and conveyed, as by reference to said indenture of mortgage or deed of trust dated August 25, 1888, will more fully appear;

And whereas, the party of the first part desires and intends, as rapidly as the same can be done upon terms satisfactory to it, to arrange for the retirement, or deposit as collateral security hereunder, of all bonds issued under and secured by the said last-mentioned indenture of mortgage or deed of trust, and to arrange for the ultimate cancellation of such bonds and satisfaction of the mortgage securing the same, as hereinafter provided;

And whereas, the said party of the first part, in pursuance of the provisions of the laws of the State of California on that behalf, did, on the 2d day of November, 1892, file in the office of the county clerk of San Franciso County, and on the 3d day of November, 1892, file in the office of the Secretary of State of the State of California, Amended Articles of Association, Incorporation, Amalgamation and Consolidation dated October 31, 1892, as by reference thereto will more fully appear.

And whereas, said party of the first part desires and intends to construct and complete its railroads and to pay off and discharge the debts incurred in the construction and completion thereof with their equipments and to purchase railroads and other property within the purposes of the corporation, and to that end desires and intends to issue its bonds in an amount necessary to

accomplish said objects and purposes, and to secure the payment thereof by mortgage upon its railroads and railroad lines hereinafter more particularly described.

And whereas, by a vote of stockholders representing upwards of two-thirds of the entire capital stock, and upwards of two-thirds of the subscribed capital stock, of the party of the first part, at a meeting duly called and held for the purpose, after notice thereof as prescribed by law, the creation and increase of the bonded indebtedness of said party of the first part as herein provided for, was authorized and directed, and the issue of the bonds referred to herein, and the execution of a mortgage to secure the same, was ordered and approved and a certificate in respect to such creation and increase of the bonded indebtedness of said party of the first part has been duly filed as required by law, in the office of the clerk of the county where the original articles of incorporation of the party of the first part are filed, and a certified copy thereof filed in the office of the Secretary of State of the State of California.

And whereas, heretofore the Board of Directors of said party of the first part, at a meeting of said board, at which all the members thereof were present, by a resolution to that effect, which was unanimously adopted, passed and concurred in, did terminate and direct that bonds of said party of the first part be prepared, executed and issued in its name and under its corporate seal to amounts which should not exceed the limits as to rate of issue and aggregate amount hereinafter prescribed therefor; such bonds to be issued in series distinguished

by successive letters of the alphabet, each series consisting of not more than fifteen million dollars in the par value of such bonds, and such bonds to bear interest at a rate not exceeding five per cent. per annum, payable semi-annually.

And whereas, the said Board of Directors, at the meeting aforesaid, and in the manner and form, and by the vote aforesaid, did further order and direct that said bonds should be in the form or substantially the form following, to wit:

SOUTHERN PACIFIC RAILROAD COMPANY (OF CALIFORNIA).

$1,000 (or $500). $1,000 (or $500).

No. ——. Series——.

FIRST CONSOLIDATED MORTGAGE GOLD BOND.

The Southern Pacific Railroad Company (of California) acknowledges itself indebted to the Central Trust Company of New York, or to the bearer hereof, in the sum of one thousand (or five hundred) dollars gold coin of the United States, which sum it promises to pay to the bearer hereof, or, if registered, to the registered holder hereof, on the first day of November, nineteen hundred and thirty-seven; and it further promises that, on presentation and surrender at or after maturity of the respective coupons hereunto annexed (authenticated by the engraved signature of the treasurer), it will pay to the person presenting the same, or, if this bond is registered and the coupons appertaining thereto canceled, it will pay to the registered holder hereof on the first days of

May and November of each year ensuing the date hereof, interest on such principal sum at the rate of five per cent. per annum, payable semi-annually, the interest hereon to commence to run on the first day of November, 1893, and both principal and interest to be payable at the office or agency of the company in the city of New York in United States gold coin.

This is one of the bonds issued under and secured by the indenture of mortgage or deed of trust from this company to the Central Trust Company of New York, trustee, dated the 15th day of September, 1893, and is issued and is to held under and subject to the terms and conditons thereof, and in case of six months default in the payment of any semi-annual installment of interest on any of the bonds issued under said indenture of mortgage of deed of trust the principal thereof may become immediately due and payable as in said indenture of mortgage or deed of trust provided.

None of said bonds are to be in anywise binding or obligatory unless authenticated by a certificate endorsed thereon, signed by said trustee or its successor or successor in said trust.

This bond may at any time, upon production thereof to said railroad company, and proper endorsement being made thereon, and either with or without the surrender to said railroad company for cancellation of all unpaid coupons appertaining thereto, be registered upon the books of the company in the name of the holder thereof, and thereupon its transferability by delivery will cease, and thereafter it can be transferred only by the regis-

tered holder or his attorney by transfer duly made upon said books, but if the coupons appertaining thereto shall not have been surrender for cancellation, any such transfer may be made to bearer, in which case the transferability hereof by delivery shall be thereupon restored.

The interest on this bond is payable without deduction for any tax which may be imposed thereon either by the laws of the United States of America or of the State of California which the said Railroad Company may be required to retain therefrom.

In witness whereof the said Southern Pacific Railroad Company has caused its corporate seal to be hereunto affixed, and this bond to be signed by its president or vice-president and secretary or assistant secretary, this fifteenth day of September, one thousand eight hundred and ninety-three.

SOUTHERN PACIFIC RAILROAD COMPANY.

_____,

President.

(Or Vice-President.)

_____,

Secretary.

(or Assistant Secretary.)

And whereas, the said Board of Directors, at the meeting aforesaid, and in the manner and form and by the vote aforesaid, did further direct that to each of said bonds there should be attached eighty-eight coupons, numbered respectively from 1 to 88, both inclusive, substantially in the following form, to wit:

(Form of Coupon.)

The Southern Pacific Railroad Company (of California) will pay bearer twenty-five (or twelve and one-half) dollars in United States gold coin at its office or agency in the city of New York, on May first (or November first), being six months interest on its First Consolidated Mortgage Gold Bond No. ——.

Treasurer.

—and that all such coupons should bear the engraved signature of the Treasurer of the party of the first part, which should be regarded and treated, in fact and in law, as equivalent to a manual signing by said officer in its behalf.

And whereas, the trustee's certificate to be endorsed upon such bonds for the purpose of authenticating the same is to be in substantially the following form, to wit:

(Form of Trustee's Certificate)

We hereby certify that this is one of the bonds issued under indenture of mortgage or deed of trust, bearing date September fifteenth, 1893, therein mentioned.

CENTRAL TRUST COMPANY OF NEW YORK,

Trustee,

By ——————,

Vice-president.

And whereas, the said Board of Directors, at the meeting aforesaid, and in manner and form and by the vote aforesaid, did further direct that, to secure the payment of said bonds, a mortgage upon the railroads and rail-

road lines of the party of the first part hereinafter described and upon such of its lands and other properties, rights, privileges and franchises as purport to be mortgaged hereby should be executed in its name and under its corporate seal, to the Central Trust Company of New York, as trustee upon the terms and conditions embodied and expressed in this indenture.

And whereas, said Board of Directors at the meeting aforesaid and in the manner and form, and by the vote aforesaid, did further direct that a sinking fund should be created, to be specially applied to the redemption and payment of said bonds on or before their maturity, by setting apart, out of the net income derived by said company from the lines of railroad herein mortgaged, the sum of twenty thousand dollars in gold coin of the United States in the year 1898, and in each year thereafter until and including the year 1912, and the sum of one hundred and twenty thousand dollars in gold coin of the United States in the year 1913, and in each year thereafter until all of said bonds, principal and interest, shall be redeemed or paid, in trust, to be invested in good securities, under the order and direction of said Board of Directors, or used to redeem said bonds; and upon said board's determining to use such sinking fund or any part thereof to redeem such bonds notice shall be published in one daily paper in the city of New York, and one daily paper in the city of San Francisco, for such length of time as the Board of Directors may order, not less than four weeks, that bonds will be redeemed therewith, and inviting bids for the surrender of such

bonds at prices to be named by the bidders; and upon reception of said bids, the lowest bids shall be accepted, and bonds redeemed to the extent of the money in the sinking fund, which said Board of Directors shall have determined to use for the redemption of such bonds, and all bonds to be redeemed therewith shall be forthwith canceled, and the trustee or trustees hereunder notified by the party of the first part of the distinguishing numbers of the bonds so redeemed and cancelled.

And whereas, the Southern Pacific Company, party of the second part herein, and lessee of the railroads of the party of the first part affected by this mortgage, has been in writing notified and informed of the intention of the party of the first part to make this mortgage and to issue the bonds to be secured thereby, and has, in writing, by order of its Board of Directors, given its consent thereto, and as an evidence of such consent has become a party to this indenture.

Now, therefore, this indenture witnesseth: That the said party of the first part, for the purpose of securing the payment of the sums of money mentioned in said bonds to be issued hereunder and the interest thereon, and in consideration of the sum of one dollar to the said party of the first part in hand paid by the party of the third part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, enfeoffed, conveyed and confirmed, and by these presents does grant, bargain, sell, release, enfeoffe, convey and confirm, unto the said party of the third part, as trustee, and to its successors and assigns forever, the following properties,

now owned or hereafter to be constructed or acquired by said party of the first part, to wit:

The railroads and railroad lines of the party of the first part in the State of California described as follows:

First. Commencing at the city and county of San Francisco, in the State of California, and running thence through the city and county of San Francisco,, the counties of San Mateo, Santa Clara, San Benito, Monterey, Fresno, Kings, Tulare and Kern to Mojave, in the county of Kern, State of California, a distance of four hundred miles, as near as may be; also a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles and across the Colorado river to the east bank thereof near Yuma, in the territory of Arizona, a distance of three hundred and fifty-six and seven-tenths miles, as near as may be; also a line of railroad from the Town of Gilroy, in the county of Santa Clara, in said State, passing through said county and the counties of Santa Cruz, San Benito, and Monterey, to a point at or near Salinas City, in said last-named county, a distance of thirty-five and one-tenth miles, as near as may be; also from a point on said road aforesaid at or near Salinas City, in the county of Monterey, southerly and easterly to a point in Kern County, south of Tulare Lake, intersecting the San Joaquin Division of the said Southern Pacific Railroad, said road passing into and through the counties of Monterey, San Luis Obispo and Kern, and being as near as may be two hundred miles in length; also commencing at or near Los Angeles, in the county of Los Angeles, and running thence southwest-

erly to San Pedro, in the same county, a distance of twenty-four and sixty-five one-hundredths miles, as near as may be, the aggregate length of all of said railroads being one thousand and sixteen and forty-five one-hundredths miles, as near as may be.

Second. Commencing at or near Hillsdale, in Santa Clara County, and running thence to a point at or near New Almaden, in Santa Clara County, a distance of seven and eight-tenths miles, as near as may be.

Third. Commencing at or near Pajaro, in Monterey County, and running thence northerly and northwesterly to a point at or near Santa Cruz, in Santa Cruz County, a distance of twenty-one and two-tenths miles, more or less; also commencing at or near Aptos, in Santa Cruz County, and running thence northerly and northeasterly via Loma Prieta and Monte Vista to a point at or near the head waters of Aptos Creek, in the same county, a distance of ten miles, more or less; the aggregate length of said railroads being thirty-one and two-tenths miles, more or less.

Fourth. Commencing at or near San Miguel, in the county of San Luis Obispo, and running thence southerly through the Counties of San Luis Obispo, Santa Barbara, Ventura and Los Angeles, to a point at or near Saugus, in Los Angeles County, on the line of the Southern Pacific Railroad, a distance of two hundred and fifty miles, more or less.

Fifth. Commencing at or near Castroville, in Monterey County, and running thence southwesterly to a point at or near Monterey; thence northeasterly to Paci-

fic Grove Retreat, and thence southwesterly to a point at or near the mouth of the Carmel River, a distance of thirty-one and twelve one-hundredths miles, more or less, and all in the county of Monterey.

Sixth. Commencing at or near Martinez, in Contra Costa County, and running easterly and southeasterly through the counties of Contra Costa, Alameda and San Joaquin via Antioch, to a point at or near Tracy, in San Joaquin County, and thence in a general southeasterly direction through the counties of San Joaquin, Stanislaus, Merced, Fresno, Kings, Tulare and Kern to a connection with the Southern Pacific Railroad at or near Pampa, in the county of Kern, a distance of three hundred and seven and fifty-eight one-hundredths miles, more or less.

Seventh. Commencing at a point on the line of the Southern Pacific Railroad at or near Avon, in the county of Contra Costa, and running thence to a point on the Central Pacific Railroad at or near Pleasanton, in the count of Alameda, a distance of thirty-five miles, more or less.

Eighth. Commencing at or near the city of Stockton, in the County of San Joaquin, and running thence easterly and northeasterly to or near Milton, in the county of Calaveras, a distance of twenty-five and sixty-eight one-hundredths miles, more or less; also an extension thereof in a general northeasterly direction to the Big Trees, with a branch from Aitaville in a northwesterly direction to Valley Springs, said extension and branch

being in said county of Calaveras, the estimated length of which said extension and branch is eighty miles.

Ninth. Commencing at or near Peters, in the county of San Joaquin, and running thence in a southeasterly direction through the counties of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare and Kern to a connection with the Southern Pacific Railroad at or near Poso, in Kern County, a distance of two hundred and eighteen and sixty-nine one-hundredths miles, more or less, with a branch from said last-mentioned line westerly to or near Modesto, in Stanislaus County, a distance of about sixteen miles; a branch westerly to a point on the Central Pacific Railroad at or near Merced, in Merced County, a distance of about ten miles; a branch westerly to a connection with the Central Pacific Railroad at or near Sycamore, in Fresno County, a distance of about ten miles; a branch westerly to a connection with the Central Pacific Railroad at or near Fresno, in Fresno County, a distance of about ten miles; and a branch westerly to a connection with the Southern Pacific Railroad at or near Tulare, in Tulare County, a distance of about sixteen miles, aggregating in all two hundred and eighty and sixty-nine one-hundredths miles, more or less.

Tenth. Commencing at or near Berenda, in the county of Madera, running thence northeasterly to a point at or near Perry's Ranch, in said county, a distance of twenty-five miles, more or less.

Eleventh. Commencing at or near Los Angeles, in the county of Los Angeles, and running thence southeasterly to Anaheim and Santa Ana, in the county of Orange,

and thence southeasterly through the counties of Los Angeles, Orange, and San Diego, to a point at or near the city of San Diego, a distance of one hundred and forty miles, more or less, with a branch from said last-mentioned line at Miraflores, in said county of Orange, to Tustin, in same county, a distance of twelve miles, more or less.

Twelfth. Commencing at or near Los Angeles, in the county of Los Angeles, and running thence northwesterly to Santa Monica, in same county, a distance of eighteen and fifty one-hundredths miles, more or less.

Thirteenth. Commencing at a point on the line of the Wilmington Division of the Southern Pacific Railroad between the towns of Wilmington and San Pedro, in the county of Los Angeles, and running thence southwesterly through said town of San Pedro to a point at or near Point Fermin; thence westerly through the lands of the San Pedro Harbor, Dock and Land Association to a point at or near the westerly boundary of said lands, all in said county of Los Angeles, and being five miles in length, more or less.

Fourteenth. Commencing at or near Long Beach, in the county of Los Angeles, and running thence in a general northeasterly direction to Whittier; thence northwesterly to a point at or near Ramona, a distance of thirty miles, more or less; also commencing at or near Los Angeles; running thence easterly to a point on the main line of the Southern Pacific Railroad between El Monte and Puente, and thence in a northeasterly direction to a point on or near San Dimos Creek, a distance

of thirty miles, more or less, all in said county of Los Angeles, and aggregating sixty miles in length, more or less.

Fifteenth. Commencing at or near Long Beach Junction, in the county of Los Angeles, and running thence to the town of Long Beach and thence in an easterly direction to the boundary line between the Rancho Los Cerritos and Rancho Los Alamitos, in the county of Los Angeles, a distance of four miles, more or less.

Sixteenth. Commencing at or near Ramona, in Los Angeles County, and running thence to a point at or near Crafton, in the county of San Bernardino, a distance of seventy-one miles, more or less.

Seventeenth. Commencing at the city and county of San Francisco, State of California, and running thence in a general southerly direction by the most practical route to San Bruno, in the county of San Mateo, the estimated length of which is eleven miles.

Eighteenth. Commencing at Kings City, in the county of Monterey, and running thence in a general easterly direction to Lewis creek, in the county of Monterey, the estimated length of which is fifteen miles.

Nineteenth. Commencing at Paso Robles, in the county of San Luis Obispo, and running thence in a general southeasterly direction to Carisso Plains in the same county, the estimated length of which is fifty-six miles.

Twentieth. Commencing at San Luis Obispo, in the county of San Luis Obispo, and running thence in a general southeasterly direction to a point on the Santa

Ynez River at Santa Ynez Mission, in the county of Santa Barbara, the estimated length of which is eighty miles.

Twenty-first. Commencing at a point at or near the mouth of the Santa Ynez River, in the county of Santa Barbara, and running thence in a general southeasterly direction via Lompoc to Santa Ynez Mission, in said county of Santa Barbara, the estimated length of which is thirty-five miles.

Twenty-second. Commencing at San Buenaventura, in the county of Ventura, and running thence in a general easterly direction via Hueneme Plains and San Fernando Valley to Los Angeles, in the County of Los Angeles, the estimated length of which is seventy miles.

Twenty-third. Commencing at Santa Monica, in the county of Los Angeles, and running thence in a general westerly direction to the new wharf west of Santa Monica Cañon, in said county, the estimated length of which is three miles.

Twenty-fourth. Commencing at Ontario, in the county of San Bernardino, and running thence southeasterly via Chino and South Riverside to Elsinore, in the county of Riverside, the estimated length of which is forty-one miles.

Twenty-fifth. Commencing at San Bernardino, in the county of San Bernardino, and running thence in a general southerly direction via Colton and Riverside to South Riverside, in the county of Riverside, the estimated length of which is twenty-eight miles.

Twenty-sixth. Commencing at Declez, in the county of San Bernardino, and running thence in a general southerly direction to Declezville, in the same county, the estimated length of which is three miles.

Twenty-seventh. Commencing at Redlands Junction, in the county of San Bernardino, and running thence in a general easterly direction via Redlands and Crafton to Yucaipa Valley, in the county of San Bernardino, the estimated length of which is fifteen miles.

Twenty-eight. Commencing at San Bernardino, in the county of San Bernardino, and running thence in a general southeasterly direction to Motor Junction, in said county, the estimated length of which is eight miles.

Twenty-ninth. Commencing at Collis, in the county of Fresno, and running thence in a general easterly direction to Fresno, in the same county, the estimated length of which is sixteen miles.

Thirtieth. Commencing at Mendota, in the county of Fresno, and running thence in a general southeasterly direction through Fresno, Kings and Kern counties to Lokern, in the county of Kern, the estimated length of which is one hundred and ten miles.

Thirty-first. Commencing at Lokern, in the county of Kern, and running thence in a general easterly direction to Rio Bravo, in the same county, the estimated length of which is sixteen miles.

Thirty-second. Commencing at Stevens, in the county of Kern, and running thence in a general easterly direction to Bakersfield, in the same county, the estimated length of which is fifteen miles.

Thirty-third. Commencing at Lokern, in the county of Kern, and running thence in a general southwesterly direction to Asphalto in the same county, the estimated length of which is ten miles.

Thirty-fourth. Commencing at Stevens, in the county of Kern, and running thence in a general southerly direction via Sunset Asphaltum Beds, and thence in a general easterly and northerly direction to Pampa, in the county of Kern, the estimated length of which is fifty-six miles.

Thirty-fifth. Commencing at the city of Fresno, in the county of Fresno, and running thence in a general northeasterly direction via the town of Pollasky, on the San Joaquin River, to a point near the head of the San Joaquin River, in Madera County, the estimated length of which is seventy-five miles.

Thirty-sixth. Commencing at Montpellier, in the county of Stanislaus, and running thence in an easterly and northerly direction to the Yosemite Valley, in Mariposa County, the estimated length of which is ninety-two miles.

Thirty-seven. Such branches, in the counties hereinbefore named or in one or more thereof, to any of the railroads or railroad lines above described, as may have been, or may hereafter be, acquired or constructed under direction of the Board of Directors of the party of the first part.

And all the appurtenances of any and all said railroads and railroad lines and branches, including therein all rights of way, superstructure, rails, tracks, side-

tracks or sidings, bridges, fences, depots, station-houses, shops, warehouses, carhouses, engine-houses, machine-shops, repair-shops, buildings, erections and structures necessary to or now or hereafter used in the operation of said railroads or said railroad lines or branches, and the lands of said party of the first part whereupon the same are or may be located, and all and singular the rolling stock, equipment and machinery appertaining thereto, whether now owned or hereafter to be acquired and also, all the rents, issues, tolls, incomes, earnings, and profits of such railroads or branches; and also, all the rights, privileges, immunities and franchises relating or pertaining to such railroads or railroad lines or branches which the said party of the first part now possesses, owns or is entitled unto, or may hereafter become possessed of or entitled unto; and also, all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity, of the said party of the first part, of, in and to the premises, and every part and parcel thereof with the appurtenances.

Also, all and singular the several sections of land so as aforesaid granted by said acts of Congress, and also all the estate, right, title, interest, claim and demand whatsoever, at law or in equity, of, in or to the same, or any part or parcel thereof, which said party of the first part now has, holds, owns or is entitled to or hereafter may or shall acquire, have, own or be or become entitled to, by force or virtue of the said acts of Congress, saving, excepting and reserving however all parts and par-

cels of said lands which have been sold or contracted to be sold or disposed of.

To have and to hold, all and singular the above-mentioned and described premises, together with the appurtenances, unto the said party of the third part, and its successors anl assigns forever, In trust, nevertheless, for the security and benefit of all and every the persons or bodies corporate who or which shall be, or at any time become, the holder or holders of any such bonds, or the coupons appertaining thereto, without preference to the holder of any of the said bonds or coupons over any of the others, by reason of priority in the date thereof or the time of the issuing or negotiating of the same.

Provided always, and these presents are upon the express condition, that if the party of the first part, or its successors or assigns, shall well and truly pay or cause to be paid to the holders of the said bonds and coupons, when and as the same shall become due and payable, the principal and interest moneys secured hereby, according to the terms, provisions and conditions, tenor and effect of the said bonds, then these presents and the estate hereby granted shall cease, determine and be null and void.

Until default shall be made by the said party of the first part, its successors and assigns, in the payment of the principal or interest of the said bonds or some of them or some part thereof, as hereinafter provided, the said party of the first part, its successors and assigns, shall be suffered and permitted to possess and enjoy the

said premises, with the appurtenances and all and singular the rights and franchises hereinbefore described, and to receive, take and use the tolls, income, earnings and profits thereof, and the trustee or trustees hereunder shall have full power in its or their discretion, upon written request of the party of the first part, to its successors or assigns, to convey, by way of release or otherwise, and fully release from the lien of this mortgage, any lands or other property of any description (except only lands granted by acts of Congress as hereinbefore described, which are not or shall not be included in the rights of way of the railroads and railroad lines of the party of the first part covered hereby, or used for the construction or operation thereof, or for the tracks, yards, depot grounds, buildings or erections thereof) which in its or their judgment, or in the opinion of an expert selected by it or them to report thereon, shall not be necessary for or for use in connection with any of the said railroads, and to consent to such changes in the location of tracks, depots and other buildings as in its or their judgment may be expedient, and to make and deliver the releases and conveyances necessary to carry the same into effect, the consideration for such releases and conveyances to be satisfactory to the party of the third part or such expert as it may appoint to report thereon and to be applied to the redemption of bonds issued under and secured by said mortgage of April 1, 1875, or this mortgage, in the manner hereinafter provided for in case of money realized upon the sale of lands granted by the United States to the party of the first

part, or, at the option of the party of the first part, its successors or assigns, to the acquisition or improvement of properties used or to be used as a part of the mortgaged lines, but any properties which may be so acquired for use as part of the mortgaged lines shall thereupon become subject to the lien of this mortgage, and upon request of the trustee or trustees hereunder shall be conveyed to it or them by the party of the first part, its successors or assigns, upon the trusts of these presents, and any and all bonds redeemed with such consideration for such releases or conveyances shall be forthwith cancelled, and the trustee or trustees hereunder, notified by the party of the first part of the distinguishing numbers of the bonds so canceled.

But if default shall be made in the payment of the principal or interest, moneys mentioned in the said bonds, or any or either of them, or any part thereof, according to the tenor and effect of said bonds, or either of them, and if such default shall continue for the period of six months, then, and in that case, the party of the third part, or its successors in the trust, at the request of the holders of one-fourth part in amount of the said bonds then outstanding, may, and at the request of the holders of a majority in amount of the said bonds then outstanding shall, enter into and upon, and take and hold possession of, all and singular the premises, estates, franchises, rights, privileges and property hereby granted and conveyed, or intended so to be, and in person, or by one or more agents, operate the said railroads, make from time to time all such repairs and replace-

ments as it or they may deem judicious, and all such useful alterations, additions and improvements as the income coming into its or their hands shall be adequate to pay, for, and take, collect and receive all fares, freights, tolls, earnings, issues, profits and income of said railroads and apply such fares, freights, tolls, earnings, issues, profits and income to the proper expenses of holding, operating and managing the said railroads and other premises, and conducting the business thereof, to the payment of and for all taxes and assessments which shall be levied or assessed thereon, and all necessary and proper repairs, replacements, alterations, additions and improvements upon said property, and all expenses, costs, charges and counsel fees in the premises of said party of the third part, or its successors in the trust, and a reasonable compensation for its or their services, and next to the payment of the interest and principal of the said bonds, according to the tenor and effect thereof, as the same may be or become due and payable; and, in case the principal moneys secured by such bonds shall not have become due, the moneys applicable to the payment of interest shall be applied upon the interest installments remaining in default, in the order of their maturity; in case the said principal moneys shall have become due, the moneys applicable to the payment of the principal and interest on such bonds shall be applied to such principal and interest pro rata without any preference or priority whatsoever.

And further, if default shall be made in the payment of the principal or interest moneys mentioned in the

said bonds, or any or either of them, or any part thereof, and if such default shall continue for the period of six months, then, and in that case, the said party of the third part, or its successors in the said trust, at the request of the holders of one-fourth part in amount of the said bonds then outstanding, may, and at the request of the holders of a majority in amount of said bonds then outstanding shall cause the whole of said premises, estates, franchises, rights, privileges and property hereby granted and conveyed, or intended so to be, with their appurtenances, and all benefit and equity of redemption of the said party of the first part, and its successors and assigns therein or thereto, to be sold at public auction in the city of New York, in the State of New York, or the city of San Francisco, in the State of California giving at least three months previous notice of the time and place of such sale, by publishing the same at least once in each week during such period of three months, in two newspapers published in said city of New York, and two newspapers published in said city of San Francisco, and giving such other notice of such sale as may be required by law, if any other notice be so required.

And it shall be lawful for the said party of the third part or its successors making such sale, and it and they are hereby authorized and empowered, as the attorney or attorneys of the party of the first part, and its successors, by these presents duly constituted and appointed for that purpose, to make, execute and deliver to the purchaser or purchasers on such sale all such deeds and conveyances as shall be necessary or proper

to convey and assure to and vest in, him or them, the said premises, estates, franchises, rights, privileges and property, and every part and parcel thereof, and all of the estate, right, title and interest of the said party of the first part, and its successors and assigns therein or thereto; and such sale, and the deeds and conveyances so to be thereupon executed, shall be valid and effectual forever, and shall be a perpetual bar, both in law and equity, against the said party of the first part, and its successors and assigns, and against all persons claiming or to claim by, from or under it or them, or any of them.

And it is further declared and agreed, that the receipt of the trustee or trustees who shall make the sale hereinbefore authorized shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchase money, and that such purchaser or purchasers, his or their heirs or assigns or personal representatives, shall not, after paying such purchase money and receiving such receipt of such trustee or trustees therefor, be obliged to see to the application of such purchase money upon or for the trusts or purposes of these presents, or be in any wise answerable for any loss, misapplication or nonapplication of such purchase money by the trustee or trustees.

And it is further declared and agreed, that the said party of the third part, or its successors in the said trust, shall out of the proceeds of such sale, or of any sale which shall, under judicial proceedings or otherwise, be made of the said premises in enforcement of the security afforded by these presents, in the first place, pay

and retain the costs and expenses attending such sale, and all counsel fees and other expenses incurred by it or them in reference to the same, and a reasonable compensation for its or their own services in the premises, and also any balance which may be due to it or them on account of any disbursements or expenses paid or incurred in or about the care and management of the said premises subsequent to the taking possession thereof by it or them, including the reasonable compensation of any agent or agents who may be employed in or about such care and management, and shall apply the residue of the proceeds of such sale, or so much thereof as may be necessary, to the payment of the whole amount of principal and interest which shall then be owing and unpaid upon the bonds secured hereby, or any of them, whether the said principal, by the tenor of the said bonds, be then due or yet to become due. And, in case of a deficiency of such proceeds to pay in full the whole amount of principal and interest owing or unpaid upon the said bonds, they shall be paid ratably in proportion to the amounts owing and unpaid upon them respectively, and without discrimination as between principal and interest, and without preference of the holder of any one bond or coupon over any of the others; and any surplus which may remain after the full payment of the principal and interest of all of the said bonds shall be paid over to the said party of the first part, or its successors or assigns, upon lawful demand being made therefor.

And it is hereby further provided, declared and agreed that upon the happening of such event or events as is

or are hereinbefore declared, agreed or provided to authorize the said party of the third part, or its successors, to sell the said premises, estates, franchises, rights, privileges and property, or to take the requisite proceedings to that end, the said party of the third part or its successors, at the request of the holders of one-fourth in amount of the said bonds then outstanding, may, and at the request of the holders of a majority in amount of said bonds then outstanding, shall, instead of taking proceedings for and making sale of said premises, estates, franchises, rights, privileges and property under and in virtue of the power of sale hereinbefore contained, proceed by bill in equity, or other appropriate proceedings in any court or courts of competent jurisdiction, to foreclose this mortgage or enforce the rights, liens and securities of the trustee or trustees and the bondholders thereunder; and thereupon said trustee or trustees shall be entitled to have the said premises, estates, franchises, rights, privileges and property hereby granted or conveyed, or intended so to be, sold by judicial sale, under the order or decree of such court or courts, for or towards the satisfaction of the principal and interest due or owing upon the then outstanding bonds issued under or entitled to the benefit of the security if this mortgage, and for the enforcement of the rights, liens and securities of the trustee or trustees and the bondholders; and, in case of such judicial sale, the net proceeds thereof shall be applicable and distributable in like manner as hereinbefore provided in respect of the net proceeds of sales of such mortgaged premises and proper-

ties, rights and franchises, under and in virtue of the power of sale hereinbefore contained; and all the stipulations and provisions in this indenture contained with reference to or consequent upon a sale of such mortgaged premises and properties, rights, immunities and franchises, when or if sold under said power of sale, shall be applicable and applied as far and as nearly as may be, in case of such judicial sale being made under the order or decree of the Court.

And it is hereby further provided, declared and agreed that in case of such sale as is hereinbefore authorized being made by the party of the third part or its successors in said trust, or in case of any judicial sale being made of the said premises, properties, rights, privileges and franchises hereby mortgaged, or any part thereof, in enforcement of the mortgage lien hereby created, the purchaser or purchasers at such sale shall be entitled, in making settlement for and payment of the purchase money bidden at such sale, to turn in or use toward the payment of such purchase money the bonds and coupons held by such purchaser or purchasers, to or toward the payment whereof the net proceeds of such sale shall be legally applicable, reckoning such bonds and coupons, or the amount of the same so turned in or used for such purpose, at such sum as would be payable out of the net proceeds of such sale to such purchaser or purchasers, as holder or holders of such bonds and coupons, for his or their just share or proportion of such net proceeds of sale, upon due apportionment of and concerning such net proceeds.

In case default shall be made by the party of the first part in the payment of any interest on any of the bonds which may at any time have been issued and be outstanding and secured by these presents according to the tenor and effect of said bonds and the coupons thereto annexed, and if such default in the payment of such interest shall continue for the period of six months after maturity and demand for such payment, then, and in such case, the default continuing as aforesaid, the trustee shall, upon the request in writing of the holders of one-fourth part in amount of the bonds hereby secured and then outstanding, declare the principal of all of said bonds immediately due and payable, and thereupon the said principal shall become immediately due and payable anything herein or in said bonds contained to the contrary thereof in anywise notwithstanding.

No delay or omission of the trustee or of the holders of bonds secured hereby in respect of any default happening and continuing as aforesaid to exercise the rights and powers arising therefrom as hereinbefore provided, shall be held to exhaust or impair such rights and powers, or be construed to be a waiver of such default but it is hereby mutually agreed, as a condition subject whereto the bonds secured hereby are issued and held by each successive holder, that the holders of a majority in amount of such bonds at any time outstanding may, by an instrument under their hands and seals, or resolution adopted at a meeting of such bondholders, waive, or instruct the trustee to waive, any default occurring and the rights accruing therefrom on such terms and con-

ditions, or without any conditions, as to them shall seem proper; provided, always, that no such action of the bondholders shall extend to or be taken to affect any subsequent defaults or impair the rights resulting therefrom, unless expressly provided for; and the holders of such majority in amount may in like manner, if, upon default as hereinbefore provided, the principal of all or any of the bonds hereby secured shall have become or be by said trustee declared due and payable before the period therein mentioned for the payment thereof shall have expired, waive such default or reverse the action of said trustee in that respect.

And the said party of the first part, for itself, its successors and assigns, doth hereby convenant and agree to and with the said party of the third part, and its successors in the trust, and to and with the respective persons and corporations who or which shall at any time become holders of the said bonds hereby secured or any of them, that the said party of the first part, its successors and assigns, shall and will at any time and from time to time hereafter, upon request, make, do, execute and deliver all such further and other acts, deeds and things as shall be reasonably advised, devised or required to effectuate the intention of these presents, and to assure and confirm to the said party of the third part, or its successors, all and singular the property and estate, real and personal, hereinbefore described, and hereby intended to be granted, and so as to render the same, and especially such portions thereof as shall be hereafter required by the said party of the first part or its suc-

cessors, available for the security and satisfaction of the said bonds, according to the intent and purpose herein expressed.

All lands granted or conveyed under the acts of Congress hereinbefore referred to and in anywise covered or affected by the provisions thereof, excepting only such of said lands as are or shall be included in the rights of way of the railroads and railroad lines of the said party of the first part, or its successors, covered hereby or as are or shall be used for the construction and operation thereof, or for the tracks, yards, depot grounds, buildings or erections thereof, shall be subject to the express provision that if and so long as the bonds issued under and secured by the said indenture of mortgage to D. O. Mills and Lloyd Tevis, dated April 1, 1875, or any thereof, shall remain outstanding, any and all sales thereof made in the manner in said last-mentioned indenture of mortgage prescribed, shall absolutely and forever, release the said lands from any and all lien or encumbrance of, under or in respect of this mortgage or the bonds issued thereunder, and if and when all the bonds issued under said indenture of mortgage of April 1, 1875, shall have been fully satisfied and discharged, and the lien of such last-mentioned indenture of mortgage upon such lands fully released, then the said lands so far as they remain unsold at that time, excepting only such of said lands as are or shall be included in the rights of way of the railroads and railroad lines of the said party of the first part, or its successors, covered hereby, or as are or shall be used for the construction and operation thereof, or

for the tracks, yards, depot grounds, buildings or erections thereof, shall be subject to the like provisions in respect to sale and conveyance, and release from the lien of this mortgage as are in said mortgage of April 1, 1875, prescribed in respect to sale, and conveyance and release from the lien thereof.

All proceeds of land sales made in the manner referred to or provided in the foregoing paragraph hereof shall be promptly applied to the purchase and cancellation of the bonds issued under and secured by said mortgage of April 1, 1875, in the manner therein provided therefor, so long as any thereof are outstanding; and when none thereof are outstanding, to the purchase and cancellation of bonds issued under and secured by this indenture in the following manner, to wit:

All such proceeds shall from time to time, as the same are realized, be used in the purchase of such bonds in the market to be canceled so long as purchases thereof can be made at par, and whenever such bonds cannot be purchased at that rate the trustee or trustees shall advertise for proposals to sell such bonds to it or them in one newspaper published in the city of New York and one newspaper published in the city of San Francisco, at least once a week for four consecutive weeks, and after receiving such proposals it or they shall purchase such bonds at the lowest terms so offered and all bonds so purchased, whether in the market or after such advertisement for proposals, together with the coupons appertaining thereto, shall be forthwith canceled and discharged.

This indenture further witnesseth, that said party of

the first part hereby agrees and covenants to and with said party of the third part that it will create a sinking fund to be specially applied to the redemption and payment on or before their maturity of the bonds to be issued under and secured by this indenture, by setting apart, out of the net income derived by it from the lines of railroad herein mortgaged, the sum of twenty thousand dollars in gold coin of the United States in the year 1898, and in each year thereafter, until and including the year 1912, and the sum of one hundred and twenty thousand dollars in gold coin of the United States in the year 1913, and in each year thereafter until all of said bonds, principal and interest, shall be redeemed or paid, in trust, to be invested in good securities, under the order and direction of the Board of Directors of the party of the first part, or used to redeem said bonds; and upon said board determining to use such sinking fund or any part thereof to redeem such bonds, notice shall be published in one daily paper in the city of New York, and one daily paper in the city of San Francisco for such length of time as said Board of Directors may order, not less than four weeks, that bonds will be redeemed therewith, and inviting bids for the surrender of such bonds at prices to be named by the bidders, and, upon reception of said bids, the lowest bids shall be accepted, and bonds redeemed, to the extent of the money in the sinking fund, which said Board of Directors shall have determined to use for, the redemption of such bonds, and all bonds so redeemed shall be forthwith canceled and the trustee or trustees hereunder notified by the party of the first part

of the distinguishing numbers of the bonds so redeemed and canceled.

And this indenture further witnesseth, that the said party of the first part hereby agrees and covenants to and with the said party of the third part, and its successors in said trust, that it will pay all ordinary and extraordinary taxes, assessments, and other public burdens and charges which shall or may be legally imposed upon the property herein described and hereby mortgaged, and every part thereof, and the said party of the third part, or its successors in said trust, or any one or more of the holders of bonds secured hereby, may in case of default of the said party of the first part in this behalf, pay and discharge the same and the amounts so paid with interest thereon at the rate of six per cent per annum until repayment by the party of the first part, its successors or assigns shall be and are hereby secured by these presents and declared to be a charge upon the premises hereby mortgaged and entitled to be paid out of the proceeds of any sale of said premises hereunder.

And this indenture further witnesseth, that the said party of the first part hereby agrees and covenents to and with the said party of the third part and its successors in said trust and to and with each of the persons and parties who may be or become owners of any of the bonds issued hereunder or secured hereby that the interest on the bonds issued hereunder and secured hereby shall be paid without deduction therefrom for any tax or taxes now imposed or hereafter to be imposed thereon, either by the laws of the United States of

America or the State of California, for national or state purposes, and which the said railroad company may be required by said laws, or any of them, to retain therefrom.

And this indenture further witnesseth, that any vacancy in the office of trustee hereunder may be permanently filled by the appointment of a new trustee or new trustees, by an instrument or concurrent instruments in writing, executed under the hands and seals of the holders of a majority in interest of the then outstanding bonds secured hereby, or their attorneys in fact thereunto authorized, but that the Board of Directors of the party of the first part or its successors may make a temporary appointment to fill such vacancy until a permanent appointment shall be made in the manner above prescribed.

And it is hereby covenanted and agreed, that any new trustee or new trustees, appointed as aforesaid, whether by a permanent or temporary appointment, shall immediately upon its, his or their appointment, and without any further act, deed or conveyance, become and be vested with all of the estates, trusts, rights, powers and duties of the trustee or trustees in whose place it, he or they shall have been appointed; but, nevertheless, the respective parties hereto, and their respective successors and assigns, shall and will, upon request, make, execute and deliver all such releases, conveyances and assurances as shall be appropriate to vest in and confirm and assure to such new trustee or new trustees such estates,

trusts, rights, powers and duties, according to the intent above expressed.

It is further provided, covenanted, declared and agreed, that the party of the third part, and its successors in the trust hereby created, is, and are from time to time, to authenticate and certify as issued hereunder, and deliver to the party of the first part its successors or assigns, bonds of the party of the first part or its successors, in the form or substantially the form above prescribed, to the amounts and upon the conditions hereinafter stated, and not otherwise, that is to say:

First. To the amount, dollar for dollar, to which now outstanding bonds of the said Southern Pacific Railroad Company issued under and secured by the mortgage of April 1, 1875, hereinbefore referred to, or now outstanding bonds of the said Southern Pacific Branch Railway Company issued under and secured by its mortgage of November 24, 1886, hereinbefore referred to, and bearing distinguishing numbers between 1 and 3,578, both inclusive, or now outstanding bonds of the said Stockton and Copperopolis Railroad Company, issued under and secured by its said mortgage of January 1, 1875, hereinbefore referred to, or now outstanding bonds of the said Southern Pacific Railroad Company, issued under and secured by its mortgage of August 25, 1888, hereinbefore referred to, shall have been deposited as collateral security with the trustee under this indenture, or to the amount to which such bonds, or any of them, which shall not have been deposited as such collateral security, shall have been (otherwise than from proceeds of land sales or

sinking fund or payments received for the so-called Mojave Branch) retired, paid and canceled.

Second. To amounts not exceeding thirty thousand dollars par value of such bonds per mile of railroad built, or to be built, ready for operation on the line formerly of the said Southern Pacific Branch Railway Company, covered by its mortgage of November 24, 1886, as hereinbefore stated, beyond and in excess of 119.26 miles; provided, however that no bonds are to be so issued or certified under this clause hereof except on the certificate of the president and chief engineer of the party of the first part or its successors, certifying that the actual cost (in cash or in bonds issued under this mortgage taken at the fair market value thereof) of the railroad so built, with respect to which it is requested that bonds shall be issued, equals or exceeds the par value of the bonds requested to be certified thereunder with respect thereto.

Third. To amounts not exceeding twenty-two thousand five hundred dollars par value of such bonds per mile for each mile of railroad now completed ready for operation, and covered by this indenture, which is not covered by the mortgages of April 1, 1875, November, 24, 1886, January 1, 1875, or August 25, 1888, hereinbefore referred to, and for each mile of railroad completed ready for operation covered by this indenture which may be hereafter completed or acquired (except railroad included in the line formerly of the Southern Pacific Branch Railway Company, described in its said mortgage of November 24, 1886.) Provided, however, that no bonds are to be so issued or certified under this clause

hereof in respect of railroad hereafter completed or acquired, except on the certificate of the president and chief engineer of the party of the first part, or its successors, certifying that the actual cost (in cash or in bonds issued under this mortgage taken at the fair market value thereof) of the mileage of road completed ready for operation, in respect to which it is requested that bonds shall be issued under this clause, equals or exceeds the par value of the bonds requested to be certified thereunder with respect thereto.

Fourth. To amounts not exceeding in the aggregate seventy-five hundred dollars par value of such bonds per mile of now or hereafter completed railroad covered by this indenture, excepting road against which bonds have been issued under the said mortgage of April 1, 1875, and excepting the line of road formerly of the said Southern Pacific Branch Railway Company, covered by its said mortgage of November 24, 1886; provided, however, that such bonds shall be issued under this clause hereof only upon certificates of the president and chief engineer of the party of the first part, or its successors, certifying that expenses and disbursements to the amount of the par value of the bonds requested to be certified have been incurred (in cash or in bonds issued, under this mortgage taken at the fair market value thereof) over and above the cost of completing or acquiring said road ready for operation in or about double-tracking, masony, iron bridges, rolling stock or other betterments or improvements, either to the permanent way or local or terminal facilities for the mortgaged lines.

Fifth. To amounts within such limit of seventy-five hundred dollars per mile of now or hereafter completed road other than the line of road formerly of said Southern Pacific Branch Railway Company, for the purpose of completing such last-mentioned line of road; provided, however, that bonds shall not be issued under this clause hereof to amounts which shall in the aggregate exceed three million dollars, and that such bonds are only to be certified by the trustee upon the certificate of the president and chief engineer of the party of the first part or its successors that an amount equal to the par value of the bonds which it is requested shall be issued has been expended, or paid (in cash or in bonds issued under this mortgage taken at the fair market value thereof) on such line of road formerly of the Southern Pacific Branch Railway Company over and above thirty thousand dollars per mile.

Authenticating certificates to bonds to be issued under this mortgage are to be signed, and deliveries thereof to be made, by the trustee under this mortgage, from time to time upon presentation to it of certificates, in writing, executed by the president and chief engineer of the party of the first part, or its successors, reciting the facts authorizing delivery of such bonds hereunder and without other evidence or proof of such facts.

All bonds issued under either of the prior mortgages hereinbefore referred to, viz., the mortgages of the said Southern Pacific Railroad Company, dated April 1, 1875, and August 25, 1888, the mortgage of said Southern Pacific Branch Railway Company, dated November 24, 1886, or

the mortgage of the said Stockton and Copperopolis Railroad Company, dated January 1, 1875, which are simultaneously with the execution hereof, or thereafter, deposited with the trustee hereunder, shall be held as collateral security for the bonds issued under this mortgage until all of the outstanding bonds issued under such prior mortgage shall have been so deposited, whereupon such deposited bonds issued under such prior mortgage shall be canceled and the mortgage securing the same shall be satisfied of record, unless the party of the first part hereto, or its successors, should desire to keep the same alive as security for the bonds issued hereunder, and the trustee hereunder should assent to so doing. While such bonds issued under such prior mortgage remain so on deposit with the trustee hereunder, neither such bonds nor the coupons appertaining thereto shall be required to be paid unless proceedings shall be taken for the foreclosure of the mortgage securing the same, in which case all the bonds and coupons secured by such prior mortgage which shall have been so deposited with the trustee hereunder shall be entitled to share, on equal terms with the other bonds issued under such prior mortgage, for the benefit and security of the bonds issued under this mortgage.

The said party of the first part further undertakes, covenants and agrees to and with the said party of the third part and its successors in this trust and to and with each of the persons and parties who may be or become owners of any of the bonds issued hereunder or secured hereby, as follows, viz:

. (1) That the total amount of bonds that may ever be issued hereunder and secured hereby shall not exceed bonds for a total amount of fifty-eight million dollars ($58,000,000) and such additional amount of bonds as may be sufficient to retire, bond for bond, outstanding first mortgage bonds of said Southern Pacific Railroad Company issued under the mortgage dated April 1, 1875, hereinbefore referred to.

(2) That no bonds shall be hereafter issued under the said mortgage of the Southern Pacific Railroad Company dated April 1, 1875, or under the said mortgage of said company dated August 25, 1888, hereinbefore referred to.

(3) That the bonds of the said Southern Pacific Railroad Company issued under the said mortgage dated April 1, 1875, and under the mortgage dated August 25, 1888 and the bonds of the said Southern Pacific Branch Railway Company issued under the mortgage dated November 24, 1886, and the bonds of the said Stockton and Copperopolis Railroad Company issued under the mortgage dated January 1, 1875, shall all be severally paid or retired at their respective maturities and not extended, to the end that the bonds issued under and secured by this mortgage shall become a first lien upon the entire mortgaged premises.

(4) That bonds shall not be certified hereunder within two years from the date hereof in excess of twenty million dollars, except against or in respect of deposit with the trustee hereunder or cancellation (otherwise than from proceeds of land sales or sinking fund or payments received for the so-called Mojave Branch) of bonds of the

Southern Pacific Railroad Company, issued under said mortgage of April 1, 1875, or against or in respect of deposit with the trustee hereunder or cancellation of bonds issued by said Stockton and Copperopolis Railroad Company under the said mortgage of January 1, 1875, or by the Southern Pacific Branch Railway Company under the said mortgage of November 24, 1886, hereinbefore referred to.

(5) That the total amount of bonds certified hereunder (excepting such as may have been certified against or in respect of deposit or retirement of bonds issued under said mortgage of April 1, 1875) plus the amount of the then outstanding bonds issued under the mortgages of January 1, 1875, November 24, 1886, and August 25, 1888 (excepting these deposited with the trustee hereunder), shall not at any time within ten years from the date hereof, exceed thirty-eight million dollars, nor shall such amount at any time after ten years from the date hereof be increased above thirty-eight million dollars, unless it shall at the time appear by certificate of the president and treasurer of the party of the first part, or its successors, that the net earnings of the railroad property covered by this mortgage shall for each of the two preceding fiscal years have been at least equal to the interest for each of such years upon the amount of the bonds then outstanding and secured by the said mortgage of April 1, 1875 and the interest at the rate of five per cent per annum upon fifty-eight million dollars.

(6) That if payment should be received by the party of the first part, or its successors, from the Atlantic and

Pacific Railroad Company, its successors or assigns, for the so-called Mojave Branch, a part of the railroad covered by the said mortgage of April 1, 1875, heretofore contracted to be sold to said Atlantic and Pacific Railroad Company, under indenture between the party of the first part hereto, the Atlantic and Pacific Railroad Company, the St. Louis and San Francisco Railroad Company and the Atchison, Topeka and Santa Fe Railroad Company, dated the 20th day of August, 1884, and therein described as extending "from the west end of the bridge over the Colorado River at or near the Needles in the State of California two hundred and forty-two and thirty-seven one-hundredths miles or thereabouts to the easterly margin of the grounds or yards of the party of the first part used in connection with the Mojave Junction station or with the main line of road of said party of the first part between Goshen and Yuma," the sum so received shall be applied to the purchase and cancellation of the bonds secured by said mortgage of April 1, 1875, if, and so far as any of such bonds are then outstanding; and after the purchase and cancellation of all the outstanding bonds secured by said mortgage, then the balance of the proceeds of said Mojave Branch shall in like manner be promptly applied to the purchase and cancellation of the bonds secured hereby.

In case the said Atlantic and Pacific Railroad Company should make default in the performance and fulfillment of the obligations and undertakings on its part, expressed in the said indenture of August 20, 1884, in respect to the purchase of and payment for the said Mo-

jave Branch, and such contract of sale should hereby or otherwise terminate, then and in that event this mortgage shall attach to and upon the said Mojave Branch with the like effect in all respects as if the same had been specifically included and described within the granting clause hereof.

The Southern Pacific Company, party of the second part to this indenture, the lessee of the railrads of the said party of the first part affected hereby, does hereby consent to this indenture, and hereby waives any and all objection it might or could have to the execution thereof, or to the issuance of the bonds therein provided for, provided that nothing in this consent or waiver contained shall be construed as a grant of any of the property rights of said Southern Pacific Company, or of its franchises, to the mortgagee or trustee named herein.

And the said party of the third part does hereby accept the trust conferred upon it by these presents, but with the understanding, and it is hereby expressly provided and agreed, that it shall not be liable or accountable for the acts, defaults or neglect of any agent or agents who may, in good faith and with reasonable discretion, be appointed under and by virtue of or for the purpose of these presents to do any of the matters or things herein provided for, and that no other liability or responsibility shall, under any circumstances, be borne by or attached to it than for the exercise of reasonable diligence only in the performance of the said trust, when action on its part for that purpose shall become necessary, and that it shall not be required to take any at-

firmative action on behalf of bondholders unless indemnified. The party of the third part is to be entitled to compensation for services in the execution of this trust.

In witness whereof, the parties hereto have caused their respective corporate seals to be hereunto affixed and attested by their respective secretaries, or assistant secretaries, and these presents to be signed by their respective Presidents or Vice-Presidents the day and year first above written.

SOUTHERN PACIFIC RAILROAD COMPANY,
By CHAS. F. CROCKER,
President.

[Seal] Attest: J. L. WILLCUTT,
Secretary.

SOUTHERN PACIFIC COMPANY,
By CHAS. F. CROCKER,
Vice-President.

[Seal] Attest: G. L. LANSING,
Secretary.

CENTRAL TRUST COMPANY OF NEW YORK,
By E. FRANCIS HYDE,
2d Vice-President.

[Seal] Attest: C. H. P. BABCOCK,
Secretary.

State of California,
City and County of San Francisco. } ss.

Charles F. Crocker, being first duly sworn, on oath says that he is an officer, to wit, the president, of the Southern Pacific Railroad Company, the corporation named in

and which executed the foregoing mortgage or deed of trust; that the same was and is made in good faith and without any design to hinder, delay or defraud creditors.

CHAS. F. CROCKER.

Subscribed and sworn to before me this 15th day of September, A. D. 1893.

[Seal] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

J. L. Willcutt, being first duly sworn, on oath says that he is an officer to wit, the secretary, of the Southern Pacific Railroad Company, the corporation named in and which executed the foregoing mortgage or deed of trust; that the same was and is made in good faith and without any design to hinder, delay or defraud creditors.

J. L. WILLCUTT.

Subscribed and sworn to before me this 15th day of September, A. D. 1893.

[Seal] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

Charles F. Crocker, being first duly sworn, on oath says that he is an officer, to wit, the vice-president, of

the Southern Pacific Company, the corporation named in and which executed the foregoing mortgage or deed of trust; that the same was and is made in good faith and without any design to hinder, delay or defraud creditors.

CHAS. F. CROCKER.

Subscribed and sworn to before me this 15th day of September, A. D. 1893.

[Seal] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

Gerrit L. Lansing, being first duly sworn, on oath says that he is an officer, to wit the secretary of the Southern Pacific Company, the corporation named in and which executed the foregoing mortgage or deed of trust; that the same was and is made in good faith and without any design to hinder, delay or defraud creditors.

G. L. LANSING.

Subscribed and sworn to before me this 15th day of September, A. D. 1893.

[Seal] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

State of New York,
City and County of New York. } ss.

E. Francis Hyde, being first duly sworn, on oath says that he is an officer, to wit, the Second Vice-president of the Central Trust Company of New York, the corporation named in and which executed the foregoing mortgage or deed of trust; that the same was and is made in good faith and without any design to hinder, delay or defraud creditors.

E. FRANCIS HYDE.

Subscribed and sworn to before me this 26th day of September, A. D. 1893.

[Seal] GEO. H. COREY,
Commissioner of Deeds for the State of California, residing in the City and County and State of New York.

State of New York,
City and County of New York. } ss.

C. H. P. Babcock, being first duly sworn, on oath says that he is an officer, to wit, the secretary of the Central Trust Company of New York, the corporation named in and which executed the foregoing mortgage or deed of trust; that the same was and is made in good faith, and without any design to hinder, delay or defraud creditors.

C. H. P. BABCOCK.

Subscribed and sworn to before me this 26th day of September, A. D. 1893.

[Seal] GEO. H. COREY,

Commissioner of Deeds for the State of California, residing in the City and County and State of New York.

State of California,
City and County of San Francisco. } ss.

On this 15th day of September, in the year one thousand eight hundred and ninety-three (1893), before me, E. B. Ryan, a notary public in and for the said City and County of San Francisco, State of California, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the president of the Southern Pacific Railroad Company, and J. L. Willcutt, known to me to be the secretary of the said Southern Pacific Railroad Company, one of the corporations that executed the within instrument, and acknowledged to me that such corporation executed the same; and the said J. L. Willcutt, with whom I am personally acquainted, being duly sworn, did depose and say; That he resides in the city of Oakland, county of Alameda and State of California; that he is and was the secretary of the Southern Pacific Railroad Company at the date and time he executed the foregoing instrument; that he knows the corporate seal of said company, and is and was, at the date of execution of said instrument, the legal custodian of said seal; that the seal affixed to the foregoing instrument was and is such corporate seal, and was by him so

affixed by order of the Board of Directors of said Southern Pacific Railroad Company; that he signed his name thereto as Secretary of said Company by the like order. And the said J. L. Willcutt further said that he was acquainted with Charles F. Crocker, and knows that said Charles F. Crocker is and was president of the Southern Pacific Railroad Company at the date and execution of said instrument; that the signature of the said Charles F. Crocker, subscribed to said instrument is in the genuine handwriting of the said Charles F. Crocker, and was thereto by him subscribed by the like order of the Board of Directors of said Company, and in the presence of him, the said deponent.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

On this 15th day of September, in the year one thousand eight hundred and ninety-three (1893) before me, E. B. Ryan, a notary public in and for the said city and county of San Francisco, State of California, duly commissioned and qualified, personally appeared Charles F. Crocker, known to me to be the vice-president of the Southern Pacific Company, and G. L. Lansing, known to me to be the Secretary of the Southern Pacific Company,

one of the corporations that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this 15th day of September, A. D. 1893.

[Seal] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

State of New York,
City and County of New York. } ss.

On this 26th day of September, in the year 1893, before me, George H. Corey, a Commissioner of the State of California in and for the State of New York, residing in said city of New York, personally appeared E. Francis Hyde and C. H. P. Babcock, known to me to be the second vice-president and secretary, respectively, of the Central Trust Company of New York, one of the corporations that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this 26th day of September, A. D. 1893.

[Seal] GEO. H. COREY,

Commissioner of Deeds for the State of Californa, residing in the City and County and State of New York.

[Endorsed]: Southern Pacific Railroad Company (of California), of the first part, Southern Pacific Company,

of the second part, and Central Trust Company of New York, of the third part. Deed of Trust. Dated September 15, 1893. U. S. vs. S. P. R. R. Co., et al. No. 979. Defendant's Exhibit No. 7. Stephen Potter, Special Examiner.

[Endorsed]: No. 979. In the Circuit Court of the United States, Ninth Circuit, Southern District of California. United States of America, Complainant, vs. Southern Pacific Railroad Company, and others Defendants. In Equity. Report of Stephen Potter, Special Examiner at San Francisco. Opened and filed Sep. 12, 1902. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

T. P. M.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE.

Washington, D. C., August 4, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed photolithograph of T. 1 S., R. 5 W., San Bernardino meridian, is a true and literal exemplification of the township plat of survey to which it purports to relate, now on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal] BINGER HERMANN,

Commissioner of the General Land Office.

FOLD-OUT IS TOO LARGE TO BE FILMED

T. P. M.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE.

Washington, D. C., August 4, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed photolithograph of T. 1 S., R. 5 W., San Bernardino meridian is a true and literal exemplification of the township plat of survey to which it purports to relate, now on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal] BINGER HERMANN,

Commissioner of the General Land Office.

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T. P. M.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE.

Washington, D. C., August 4, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed photolithograph of T. 2 S., R. 6 W., San Bernardino meridian, is a true and literal exemplification of the township plat of survey to which it purports to relate, now on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal] BINGER HERMANN,

Commissioner of the General Land Office.

FOLD-OUT IS TOO LARGE TO BE FILMED

Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

UNITED STATES,
Plaintiff,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, et al.,
Defendants.
No. 979.

Petition for Appeal.

The defendant, Southern Pacific Railroad Company, Central Trust Company of New York, D. O. Mills and Homer S. King, as trustees, conceiving themselves aggrieved by the decree made and entered herein on July 13th, 1903, appeal from the said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in their assignment of errors filed herein; and they pray that their appeal may be allowed and that a true copy of the record, opinion of the Court, assignment of errors, and all proceedings in the cause, under seal of this court and the hand of its Clerk, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California.

Your petitioners further pray that, upon giving a good and sufficient bond, to be approved by this Court, all

proceedings in this cause, and upon the said decree, may be stayed pending their appeal.

Dated September 11th, 1903.

WM. SINGER, Jr.,
Attorney for said Defendants.

WM. F. HERRIN,
Counsel for said Defendants.

Order Allowing Appeal.

The foregoing claim of appeal, and prayer for supersedeas, are allowed and granted; the supersedeas to take effect upon the filing of a good and sufficient bond in the sum of two thousand ($2,000.00) dollars, conditioned that the appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good.

It is further ordered that a true copy of the record, opinion of the Court, assignment of errors, and all proceedings in the cause, under the seal of this Court and the hand of its clerk, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California.

Los Angeles, September 11th, 1903.

OLIN WELLBORN,
Judge.

[Endorsed]: No. 979. U. S. Circuit Court, 9th Circuit, Southern District of Cal'a., Southern Division. United States vs. S. P. R. R. Co., et al. Petition for Appeal and

Order Allowing Appeal. Wm. Singer, Jr., N. E. cor. 2d & Mission Sts., San Francisco, Cal., Atty. for Defts. Filed Sep. 11, 1903. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

UNITED STATES, Plaintiff,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, et al., Defendants. } No. 979.

Assignment of Errors.

The defendants Southern Pacific Railroad Company, Central Trust Company of New York, D. O. Mills and Homer S. King, as trustees, in connection with their petition for appeal herein, say that the decree in the above-entitled cause, made and entered on July 13th, 1903, is erroneous and against their just rights, in the following particulars:

I.

(a) The Court erred in finding, or determining, that all or any of the lands in the said decree described were subjudice at the time the grant to the defendant South-

ern Pacific Railroad Company, by act of Congress of March 3d, 1871, took effect.

(b) The Court erred in finding, or determining, that all or any of the lands in the said decree described, were excepted from the grant to the defendant Southern Pacific Railroad Company, made by the said act of Congress of March 3d, 1871.

(c) The Court erred in finding, or determining, that all or any of the lands in the said decree described, were erroneously, or by mistake, or improvidently, patented to the defendant Southern Pacific Railroad Company; and in this behalf the Court erred in not finding that each and all of such patents were duly and properly issued by the United States unto the defendant Southern Pacific Railroad Company.

II.

(a) The Court erred in ordering, adjudging, or decreeing, that the United States is the absolute owner by title in fee-simple or otherwise, of all or any of the lands in the said decree described.

(b) The Court erred in ordering, adjudging, or decreeing, that the defendants, Southern Pacific Railroad Company, Central Trust Company of New York, D. O. Mills and Homer S. King as trustees, have no right, title, interest or estate in or to the lands described in "Section 2" of the said decree; and in this behalf the court erred in not ordering, adjudging and decreeing that the defendant Southern Pacific Railroad Company, is the owner by title in fee simple absolute subject to the trust

mortgages of the defendants, Central Trust Company of New York, D. O. Mills, and Homer S. King, as trustees, of all the said lands.

(c) The Court erred in ordering, adjudging, or decreeing all or any, patents issued by the United States to the defendant Southern Pacific Railroad Company, conveying or purporting to convey all or any of the lands described in "Section 2" of the said decree, vacated or annulled.

III.

The Court erred in ordering, adjudging, or decreeing, that the defendant, Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-five cents per acre, or in any sum, as money realized from the sale of land described in "Section 3" of the said decree, or otherwise.

IV.

The Court erred in ordering, adjudging, or decreeing, that the defendant, Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-five cents per acre, or in any sum, as money realized from the sale of land described in "Section 4" of the said decree, or otherwise.

V.

The Court erred in ordering, adjudging, or decreeing, that the defendant, Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-five cents per acre, or in any sum, as

money realized from the sale of land described in "Section 5" of the said decree, or otherwise.

VI.

The Court erred in ordering, adjudging, or decreeing, that the defendant, Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-five cents per acre, or in any sum, as money realized from the sale of land described in "Section 6" of the said decree, or otherwise.

VII.

The Court erred in ordering, adjudging, or decreeing, that the defendant, Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-five cents per acre, or in any sum, as money realized from the sale of land described in "Section 7" of the said decree, or otherwise.

VIII.

The Court erred in ordering, adjudging, or decreeing, that the defendant, Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-five cents per acre, or in any sum, as money realized from the sale of land described in "Section 8" of the said decree, or otherwise.

IX.

The Court erred in ordering, adjudging, or decreeing, that the defendant, Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-five cents per acre, or in any sum, as

money realized from the sale of land described in "Section 9" of the said decree, or otherwise.

X.

The Court erred in ordering, adjudging, or decreeing, that the defendant, Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-five cents per acre, or in any sum, as money realized from the sale of land described in "Section 10" of the said decree, or otherwise.

XI.

The Court erred in ordering, adjudging, or decreeing, that the defendant, Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-five cents per acre, or in any sum, as money realized from the sale of land described in "Section 11" of the said decree, or otherwise.

XII.

The Court erred in ordering, adjudging, or decreeing, that the defendant, Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-five cents per acre, or in any sum, as money realized from the sale of land described in "Section 12" of the said decree, or otherwise.

XIII.

The Court erred in ordering, adjudging, or decreeing, that the defendant, Southern Pacific Railroad Company is indebted to the United States in the sum of one dollar and twenty-five cents per acre, or in any sum, as

money realized from the sale of land described in "Section 13" of the said decree, or otherwise.

XIV.

(a) The Court erred in ordering, adjudging, or decreeing, that the United States have or recover of or from the defendant Southern Pacific Railroad Company, the sum of one thousand five hundred and eighty-four dollars and twenty-two cents, or any sum whatever, with interest at the rate of seven per cent per annum, from the date of said decree, or with any interest.

(b) The Court erred in ordering, adjudging, or decreeing, that the United States have or recover of or from the defendant, Southern Pacific Railroad Company costs herein taxed at eighty dollars and seventy cents, or any costs.

(c) The Court erred in ordering, adjudging, or decreeing, that execution issue against the defendant Southern Pacific Railroad Company for the sums stated in "Section 14" of the said decree, for either or any of said sums, or for any sum whatever.

XV.

Wherefore the defendants Southern Pacific Railroad Company, Central Trust Company of New York, D. O. Mills and Homer S. King, as trustees, pray that the said decree be reversed in all respects and particulars herein

assigned or specified as error; and that the said Circuit Court be directed to enter a decree accordingly.

WM. SINGER, Jr.,

Attorney for the said Defendants.

WM. F. HERRIN,

Counsel for the said Defendants.

[Endorsed]: No. 979. U. S. Circuit Court, 9th Circuit, Southern District of Cal'a, Southern Division. United States vs. S. P. R. R. Co., et al. Assignment of Errors. Wm. Singer, Jr., N. E. Corner Second and Mission Streets, San Francisco, Cal., Atty. for Defts. Filed Sep. 11, 1903. Wm. M. Van Dyke, Clerk. Chas N. Williams, Deputy.

Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

UNITED STATES, Plaintiff, vs. SOUTHERN PACIFIC RAILROAD COMPANY, et al., Defendants.	No. 979.

Bond on Appeal.

We, W. J. Washburn and Charles Seyler, both of the county of Los Angeles, State of California, are held and firmly bound to pay unto the United States of America

the sum of two thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, and each of us our heirs, executors and administrators, jointly and severally, firmly by these presents.

The defendants Southern Pacific Railroad Company, Central Trust Company of New York, D. O. Mills and Homer S. King, as trustees, have been allowed an appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, and a supersedeas from the decree entered in the above-entitled Court and cause on July 13th, 1903; and the condition of this obligation is, that if the said defendants shall prosecute their said appeal to effect, and answer all damages and costs, if they fail to make their appeal good, then this obligation shall be void, otherwise to remain in full force.

Dated, signed and sealed on September 11th, 1903.

W. J. WASHBURN. [Seal]
CHAS. SEYLER. [Seal]

State of California,
County of Los Angeles. } ss.

W. J. Washburn and Charles Seyler, being duly sworn, each for himself, says; I am one of the sureties on the foregoing bond, and subscribed my name thereto.

I am a resident of and freeholder within the county of Los Angeles, State of California, and am worth the sum of two thousand dollars, over and above all my just debts and liabilities, in property within the said county which is not exempt from execution.

W. J. WASHBURN.
CHAS. SEYLER.

Subscribed and sworn to before me on September 11th, 1903.

[Seal] NATHAN P. BUNDY,

Notary Public in and for the City and County of San Francisco, State of California.

The foregoing bond is approved.

OLIN WELLBORN,

Judge.

[Endorsed]: No. 979. U. S. Circuit Court, 9th Circuit, Southern District of Cal'a. Southern Division. United States vs. S. P. R. R. Co., et al. Bond on Appeal. Filed Sep. 11, 1903. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Wm. Singer, Jr., N. E. Cor. 2d and Mission Sts., San Francisco, Cal., Atty. for Defts.

In the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

THE UNITED STATES,
Complainants,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, et al.,
Defendants.
No. 979.

Clerk's Certificate to Transcript.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit,

in and for the Southern District of California, do hereby certify the foregoing five hundred and ninety-three (593) typewritten pages, numbered from 1 to 593 inclusive, and comprised in two (2) volumes, numbered respectively volumes 1 and 2, including diagrams, maps and plats, to be a full, true and correct copy of the record, pleadings, papers, opinion of the court, assignment of errors, and of all proceedings in the above and therein entitled cause, and that the same together constitute the transcript of the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, in said cause.

I do further certify that the cost of the foregoing record is $361.10, the amount whereof is to be paid me by the Southern Pacific Railroad Company, one of the appellants in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Circuit Court of the United States of America, of the Ninth Judicial Circuit in and for the Southern District of California, this 23d day of February in the year of our Lord, one thousand nine hundred and four, and of the Independence of the United States the one hundred and twenty-eighth.

[Seal] WM. M. VAN DYKE,

Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

[Endorsed]: No. 1045. In the United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Railroad Company, Central Trust Company of New York, D. O. Mills and Homer S. King, as Trustees, Appellants, vs. The United States, Appellee. Transcript of Record. Upon Appeal from the United States Circuit Court for the Southern District of California.

Filed March 5, 1904.

F. D. MONCKTON,
Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

SOUTHERN PACIFIC RAILROAD COMPANY, CENTRAL TRUST COMPANY, OF NEW YORK, D. O. MILLS and HOMER S. KING, as Trustees,

Appellants,

vs.

THE UNITED STATES,

Appellee.

No. 1045.

Certificate of Clerk U. S: Circuit Court of Appeals to Printed Transcript of Record.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing six hundred and thirty-seven (637) pages, numbered from one (1) to six hundred and thirty-seven (637), inclusive, including the index and covers thereto, and contained in the preceding two (2) volumes, marked respectively, Volume I and Volume II, to be a true copy of the printed transcript of record upon appeal from the United States Circuit Court for the Southern District of California in the above-entitled case, and that the same

was printed under my supervision pursuant to the provisions of rule 23 of the rules of practice of the said the United States Circuit Court of Appeals for the Ninth Circuit.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 30th day of November, A. D. 1904.

[Seal] F. D. MONCKTON,
Clerk.

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PROCEEDINGS

HAD IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

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At a stated term, to wit, the October Term A. D. 1904, of the United States Circuit Court of Appeals for the Ninth Circuit held at the Courtroom, in the City and County of San Francisco, on Tuesday, the third day of May, in the year of our Lord one thousand nine hundred and four. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Appellants,
vs.
THE UNITED STATES,
Appellee.
No. 1045.

Order of Submission.

Upon consideration of the stipulation of counsel for the respective parties to submit the above-entitled cause on briefs, heretofore filed, it is ordered that the appeal therein be, and hereby is, submitted to Gilbert and Morrow, Circuit Judges, and Hawley, District Judge, for consideration and decision on briefs 30 x 30 x 20 x 10.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

SOUTHERN PACIFIC RAILROAD COMPANY, CENTRAL TRUST COMPANY, OF NEW YORK, D. O. MILLS and HOMER S. KING, as Trustees,

Appellants,

vs.

THE UNITED STATES,

Appellee.

No. 1045.

Opinion U. S. Circuit Court of Appeals.

WM. SINGER, JR., and WM. F. HERRIN, for the Appellants.

JOSEPH H. CALL, for the Appellee.

Before GILBERT and MORROW, Circuit Judges and Hawley, District Judge.

GILBERT, Circuit Judge, delivered the opinion of the Court.

On February 28, 1901, the United States filed its bill in equity against the Southern Pacific Railroad Company and other defendants to quiet its title to certain lands in California and to cancel and annul patents to other lands alleged to have been erroneously issued by the United States to the railroad company as a part of its grant of March 3, 1871, except such lands as had been sold by the railroad company to bona fide purchasers,

and to obtain adjudication concerning the question of what lands had been sold to such bona fide purchasers, as to which it prayed that the title of purchasers might be confirmed and that judgment might be had in favor of the United States against the railroad company for the sum of $1.25 per acre. Testimony was taken upon the issues raised upon the bill and the answers of the several defendants, and on the merits, a decree was entered by the Circuit Court in favor of the United States, quieting its title to lands not patented, vacating patents for lands patented to the railroad company and not sold, confirming the titles of bona fide purchasers of patented lands, and adjudging that the railroad company pay the government price for the lands found to have been sold to bona fide purchasers. The railroad company and the trustees of certain trust deeds executed by it have appealed to this court.

On September 28, 1883, the Mexican government executed to John Bandini a grant for a tract of land known as the Rancho Jurupa and on December 4, 1838, gave him juridical possession thereof. The grant was described as follows: "Commencing at the foot of a small hill standing alone at the canada which the Messrs. Yorba recognize as their boundary, on the further side of the river Jurupa, which hill the Indians in their tongue call 'Pachappa,' which was taken for a landmark placing on it certain stones on top of others; thence course westerly along the bank of said river thirty thousand varas to the point of the same tableland on which Mr. Bandini had established his house,

and where the said river makes a bend, where a stake was driven for a landmark; thence northerly, fronting towards Cucamonga, seven thousand varas, passing between the two springs of Guapan, ending at the first white sand bank which there is on said course towards Cucamonga; thence easterly the same thirty thousand varas to a small lone mountain on the left hand of the high road going from San Gabriel to San Bernardino, called by the Indians 'Catamalcay,' and which was designated as a landmark; thence southerly seven thousand varas to the point of beginning at the foot of the small hill called 'Pachappa,' which makes a corner, east, west." In December, 1852, Bandini filed his petition and claim for said land with the Board of Land Commissioners, appointed and constituted pursuant to the Act of Congress of March 3, 1851, entitled "An act to ascertain and settle the private land claims in the State of California." On October 17, 1854, the said Commissioners confirmed the grant of said Bandini in accordance with the description thereof contained in his petition and grant. On an appeal taken to the District Court of the United States for the Southern District of California, Abel Stearns having been substituted for Bandini as his successor in interest, the decree of confirmation was, on April 5, 1861, affirmed by that court. On January 14, 1869, Abel Stearns having filed in the office of the United States Surveyor General at San Francisco, a certified copy of the decree of the Court, and having applied for a survey and location of his claim, the Sur-

veyor General found that the claim of Abel Stearns to the Jurupa Rancho had been finally confirmed by the Court, and directed that a survey thereof be made in accordance with the provisions of the act of Congress of July 1, 1864. The survey was accordingly made in the year 1869, and on February 26, 1872, the plat and field-notes thereof were filed with and approved by the Surveyor General for the District of California, and were filed in the office of the Commissioner of the General Land Office. They were entitled "field-notes of survey of Rancho Jurupa finally confirmed to Abel Stearns." On February 26, 1877, the Secretary of the Interior ordered that a resurvey be made of the Jurupa Rancho, and in the following year such resurvey was made, and upon such second survey and in accordance therewith, a patent was issued on May 23, 1879, to Abel Stearns, and was accepted by him. By the second survey and the patent which was issued thereupon the west line of the Jurupa Rancho was changed, and the northern boundary line thereof was readjusted and established at a considerable distance south of the northern line as located by the first survey. The lands in controversy in this suit lie between the northern lines of the two surveys. They are included in the first survey of the Jurupa Rancho, but are excluded from the second. They are also within the place limits of the railroad grant given in aid of the construction of the Southern Pacific Railroad from a point near Tehachapi Pass via Los Angeles to the Colorado River at or near Fort Yuma. In the year 1874 the railroad company filed with

the Commissioner of the General Land Office its map of definite location, and constructed its road in accordance therewith. The grant to the railroad company and the definite location of its lines were made in the interim between the first and the second surveys of the Jurupa Rancho. The principal question involved in this case is whether or not the lands in controversy were subject to the railroad grant.

In Southern Pacific Railroad Company vs. Brown, 75 Fed. 85, the controversy concerned lands affected by the change in the western boundary line of the Rancho Jurupa, as made by the second survey and the patent. This Court held that the land was sub judice at the date of the railroad grant and at the time of the location of the line of the road, for the reason that it was at those dates included in the first survey of the Jurupa grant. In so holding the Court found and gave effect to parol evidence that Stearns in his lifetime had claimed the land to be within the boundaries of his grant. The appellants seek to distinguish the present case from that and to present considerations not involved in that decision. They contend that none of the lands in suit were sub judice at the time when the railroad land grant attached, for the reasons: First, that it nowhere appears in the record that either Bandini or Stearns, his successor in interest, ever claimed that the lines established by the first survey were the true line of the Jurupa grant; second, that at the time of that survey there had been no decree finally confirming the grant for the reason that an appeal had been taken to,

and was pending in, the Supreme Court of the United States, and that until the decree was finally confirmed, the Surveyor General had no lawful authority to make such survey under the provisions of the Act of July 1, 1864, 13 U. S. Stats. 332; third, that the first survey and the map thereof were never approved by the Commissioner of the General Land Office as required by the law of 1864, and that the approval thereof by the Surveyor General was without legal significance.

It is true that the record furnishes no information whatever that a claim was ever actually asserted by either Bandini or by Stearns that the lines of the Jurupa grant were the lines established by the first survey. The appellants contend that the lines established by that survey included more than the land described in Bandini's petition to the Board of Commissioners. There is nothing in the record to substantiate that contention. It cannot be discovered by reading the averments of the petition and comparing them with the lines fixed by the first survey that there is variance between them. The whole difference in the surveys, it appears, was caused by different identification by the surveyors of the landmarks and lines described in the grant. The act of 1864 under which the first survey was made authorized such a survey and declared it to be the duty of the Surveyor General of California "to cause all the private land claims finally confirmed to be accurately surveyed and plats thereof to be made whenever requested by the claimants."

In the Brown case, the Court answered the contention

that Stearns never made actual claim to the land in controversy by referring to the evidence, which proved the contrary. But it is not conceived that that consideration controlled decision in that case. In order to withdraw the land from the operation of the railroad grant, it was not necessary that Stearns should have expressly claimed in accordance with the first survey. It was sufficient that he never of record repudiated it or denied its correctness. He had made his claim by describing his grant in his petition and seeking its confirmation. The survey which was made in pursuance thereof was the official interpretation of his claim. Until it was disapproved it stood upon the files and records of the General Land Office as the assertion of his claim and the basis of his application for a patent. Standing as it did upon the records, it had the effect to withdraw the land therein described from the operation of the railroad land grant. Newhall vs. Sanger, 92 U. S. 761; Doolon vs. Carr, 125 U. S. 618; Cameron vs. United States, 148 U. S. 301; Hastings & Dakota Railroad vs. Whitney, 132 U. S. 357; and Whitney vs. Taylor, 158 U. S. 85. In Hastings & Dakota Railroad Co. vs. Whitney, it appeared that at the time of the filing by the railroad company of its map of definite location, there stood upon the records of the local land office a defective homestead entry. The Court said of the homestead entry: "So long as it remains a subsisting entry of record, whose legality has been passed upon by the land authorities, and their action remains unreversed, it is such an appropriation of the tract as segregates it from

the public domain, and therefore precludes it from subsequent grants." In Whitney vs. Taylor, it appeared that a pre-emption entry remained uncanceled upon the records of the land office at the time of the railroad land grant, but that the pre-emption entryman had abandoned his claim and had left the country three years before the date of the grant. The Court held that the entry being of record at the time when the grant to the railroad company attached, had the effect to except the land from the operation thereof and that after the subsequent cancellation of the entry, the land remained part of the public domain.

It is urged that at the time of the first survey the Jurupa claim had not been finally confirmed for the reason that an appeal had been taken to the Supreme Court of the United States from the decree of the District Court of the Southern District of California, affirming the decision of the Board of Commissioners. The evidence upon that point consists of a single document, a transcript of a mandate of the Supreme Court of the United States issued on January 8, 1875, directed to the District Court of the United States for the District of California, reciting that "the United States had prayed an appeal to the Supreme Court from the decree of the District Court as by the inspection of the certificate of the clerk of the said District Court under the seal of the said court which was brought into the Supreme Court of the United States agreeable to the act of Congress and the rules of said Supreme Court in such case made and provided, fully and at

large appears. And whereas, in the present term of October, in the year of our Lord, one thousand eight hundred and seventy-four, the said cause came on to be heard before the said Supreme Court, and it appearing that the said appellant has failed to have its cause filed and docketed in conformity to the rules of this court, it is now hereby ordered, adjudged and decreed by this Court that this appeal from the District Court of the United States for the District of California be and the same is hereby docketed and dismissed." From this mandate it would appear that the only step taken by the United States toward taking an appeal to the Supreme Court from the decree of the District Court was to pray for the allowance of an appeal, and that the order of dismissal was obtained by the claimant in that suit by producing and filing in the Supreme Court a certificate of the clerk of the District Court showing that fact. Such an application for an appeal could have no effect upon the finality of the decree of the District Court. In Hubbell vs. The United States, 171 U. S. 203-210, the Court in a similar case said: "It appears that on August 21, 1885, an application for an appeal was filed by the claimant, but as this appeal was never allowed or perfected and as it does not appear that a transcript of the record was ever filed in this court, it is obvious that the authorities which hold that an appeal perfected to a Superior Court vacates the judgment of the court below have no application to this case." At the time when the application was made for the survey, the decree of the District Court had stood

eight years upon the records of the court unaffected by any subsequent proceeding except an application for an appeal, an appeal that, so far as the record shows, was never perfected. There can be no doubt that it was a final confirmation of the claim at the time when the first survey was made.

The fact that the first survey was not approved by the Commissioner of the General Land Office did not impair its effect as an official withdrawal of the lands from the railroad grant. The act of July 1, 1864, 13 Stats. 332, provides that if no objection shall be made to the survey, the Surveyor General of the State of California shall approve the same and transmit a copy thereof to the Commissioner of the General Land Office at Washington, for his examination and approval. The survey and plat in this case remained awaiting approval until 1876 when it was disapproved by the Commissioner. A similar state of facts existed in Doolan vs. Carr, supra, in which it appeared that in 1865 an official survey of the Mexican grant was made under the directions of the Surveyor General, and in the following year was duly approved by him, and that it was never approved by the Commissioner of the General Land Office, but that in 1868 it was set aside, and that in March, 1869, a new survey was made. The Court held that the land claimed as a part and parcel of said Mexican grant was reserved as such, continually from the date of that grant in 1839 until June 6, 1871, the date when the second survey was approved by the Commissioner of the General Land Office. It was not neces-

sary therefore that in order to withdraw the land from operation of the railroad land grant there should have been an approval of the survey by the Commissioner of the General Land Office. The claim as surveyed was of record pending and awaiting such approval. If the approval had been made, the patent would have issued in accordance therewith under the directions of the act of 1864. That it was not so approved rendered it none the less a withdrawal. Tubbs vs. Wilhoit, 138 U. S. 142.

It is contended that the act of March 2, 1896, gratuitously and unconditionally confirmed title to the lands which had been mortgaged by the railroad company, and that the Circuit Court erred in setting aside the patents to those lands. The act so referred to provided that "no patent to any land held by a bona fide purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed." Allusion is made to the fact that the act differs materially from the act of March 3, 1887, 24 U. S. Stats. 556, which contained the proviso that a mortgage or pledge "of said lands by the company shall not be considered as a sale for the purpose of this act," and it is argued that by the act of 1896, Congress intended to affirm the title of all the lands mortgaged in good faith by the railroad company. As sustaining this view, reference is made to the language of the decision in United States vs. Winona etc., 165 U. S. 481, in which it was said: "The act of 1896 confirming the right and title of a bona fide purchaser, and providing that the patent to his land

should not be vacated or annulled, must be held to include one who, if not in the fullest sense a bona fide purchaser, has nevertheless purchased in good faith from the railroad company." To this it is a sufficient answer to say that the mortgages in the present case do not by their terms include any of the lands which are involved in the controversy. The first mortgage was made in 1875, and the second in 1893. The lands were not patented to the railroad company until 1894. In neither of the mortgages are the mortgaged lands particularly described. The conveyance is of the sections of land "granted by said acts of Congress." Under such a mortgage the trustees took for the benefit of the bondholders, such lands only as were included in the grant. They were not and could not be bona fide purchasers of any particular tract of land not actually included therein. These particular lands were not specially described in or understood to be included in the mortgage, nor were they, so far as the record shows, within the common intent of the contracting parties.

It is contended further that the appellee is not entitled to recover any price for the lands sold by the appellants because, first, by the act of March 2, 1896, Congress gratuitously and unconditionally affirmed the title thereto; second, the demand for such payment is in assumpsit at law; and, third, the railroad company has not received, these lands included, the quantity of land granted it by Congress. It is said that with full power to cancel the patents and thus recover the lands, Congress chose to affirm the title to purchasers in good

faith, which it is conceded it had the power to do, but it is urged that after such confirmation it had no power to place upon all of said lands the price of one and one-quarter dollars per acre, and to declare that the railroad company shall, because of such confirmation be a debtor to the United States, and reference is made to the fact that some of the lands were sold by the railroad company at less than one and one-quarter dollars per acre. Congress no doubt had the right to confirm the title to the purchasers who bought in good faith from the railroad company lands which were erroneously patented to it, and it did so. It also had the right to require the railroad company to account as for money had and received for the amounts realized by it on the sale of such lands. Instead of so doing, Congress provided that the railroad company should pay the regular minimum price at which the government had offered similar lands for sale. It is no answer to the asserted right of the government to recover this amount that some of the lands were sold for less than that price. It is not disputed that the railroad company received for all the lands so disposed of a price which would average more than one and one-quarter dollars per acre. The transaction is to be dealt with as a whole, and is not to be affected by the fact that some of the tracts may have been sold for less than one and one-quarter dollars per acre.

The point is made that an action to recover the value in money of lands sold cannot be joined with a suit to cancel patents for other lands, and that the case proven

shows no ground of equitable jurisdiction as to the several tracts of land sold by the appellants. But there was no demurrer to the bill or plea to the jurisdiction in equity. By answering to the merits the appellants waived any right they may have had to object to the power of the court to deal with the case as one in equity, the court having the power to grant the relief sought. Union Trust Co. vs. Illinois Midland Ry. Co., 117 U. S. 434; Brown vs. Lake Superior Iron Co., 134 U. S. 530; Insley vs. United States, 150 U. S. 512; Perego vs. Dodge, 163 U. S. 160. See, also, Southern Pacific Railroad Co. vs. The United States, decided by this Court at the present term.

The appellants contend that the money value of the land patented to the railroad company and sold by it to bona fide purchasers, cannot properly be recovered from the company without showing that it had already received those lands excluded, the full quantity granted it by the act, that where lands have been erroneously patented to a railroad company under a grant of quantity, the proper remedy is to charge the quantity of land thus patented against the quantity granted in final adjustment, and that since the government price of all such lands is the same, the appellee will sustain no loss or injury if recovery of the price of these lands is denied. The case of Winona etc. R. R. Co. vs. The United States, 165 U. S. 463, is cited in support of this contention. The suit in that case was brought by the United States for the purpose of canceling certifications of certain lands that had been wrongfully certified to

the State of Minnesota for the benefit of the railroad. The railroad company had many years before constructed its road, and earned the land granted. It had received no more land than Congress had proposed to grant in aid of the construction of the road. The Court, referring to these facts, and to the fact that it did not appear that there were not within the granted or indemnity limits lands which the company might have rightfully received but for the erroneous certification, said, on page 482: "It will hardly be contended that, if, simply through a mistake of the land department, these lands were certified when at the time other lands were open to certification which could rightfully have been certified and which have since been disposed of by the government to other parties, so that there is now no way of filling the grant, the government can nevertheless recover the value of the lands so erroneously certified." That case, it will be observed, differs materially from the present case, in the fact that in the former there remained no lands within the indemnity limits for selection by the railroad company out of which it could have secured the quantity of lands given it by the grant. In the case at bar, while it is true that the railroad company has not yet received within its place limits, including the lands in controversy in this suit, the full quantity of land granted it by Congress, there is no contention that it cannot, out of the indemnity limits, obtain full satisfaction of its grant. It is stipulated in the case that within the indemnity limits of the grant and outside of the twenty-mile limits "there now remain

more than 50,000 acres of surveyed public lands of the United States for which there has been no selection or application to select made by said company." That the company has not received, exclusive of the lands in controversy, the full quantity of land granted in aid of the construction of its road, is no reason why it should be allowed to retain those lands, or to deny its liability for the value thereof, when sold to others. The grant was not a grant of quantity, but a grant of specific lands within certain place limits, with the right, upon conditions, to select indemnity lands in lieu thereof. In brief, the answer to the company's contention is that these lands are not within its grant; that they are lands to which it had no right, and that it must therefore pay the price fixed by the government, and look to the indemnity limits for the satisfaction of its grant. The decree of the Circuit Court is affirmed.

[Endorsed]: Opinion. Filed Oct. 17, 1904. F. D. Monckton, Clerk.

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United States Circuit Court of Appeals, for the Ninth Circuit.

THE SOUTHERN PACIFIC RAILROAD COMPANY, THE CENTRAL TRUST COMPANY OF NEW YORK, D. O. MILLS, and HOMER S. KING,
Appellants,

vs.

THE UNITED STATES,
Appellee.

No. 1045.

Decree U. S. Circuit Court of Appeals.

Appeal from the Circuit Court of the United States for the Southern District of California.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of California, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed.

[Endorsed]: Decree. Filed and Entered. Oct. 17, 1904. F. D. Monckton, Clerk.

At a stated term, to wit, the October Term A. D. 1904 of the United States Circuit Court of Appeals for the Ninth Circuit, held at the Courtroom, in the City and County of San Francisco, on Monday, the thirty-first day of October, in the Year of our Lord one thousand nine hundred and four. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable THOMAS P. HAWLEY, District Judge.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Appellants,
vs.
THE UNITED STATES,
Appellee.
No. 1045.

Order Allowing Appeal to United States Supreme Court.

On motion of Mr. William Singer, Jr., attorney for the appellants in this cause, it is ordered that an appeal be, and hereby is, allowed the said appellants to the Supreme Court of the United States from the decree of this Court filed and entered herein on October 17, 1904.

In the United States Circuit Court of Appeals, Ninth Circuit.

SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Appellants,
vs.
THE UNITED STATES,
Appellee.
No. 1045.

Petition for Appeal to Supreme Court.

The above-named appellants, conceiving themselves aggrieved by the decree made and entered herein on October 17th, 1904, appeal therefrom to the Supreme Court of the United States, for the reasons specified in their assignment of errors filed herewith; and they pray that their appeal may be allowed, and that a transcript of the record, proceedings and papers upon which the said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Your petitioners pray that upon giving a good and sufficient bond to be approved by this Court, all proceedings in this cause, and upon the said decree, may be stayed pending their appeal.

WM. SINGER, Jr.,
Attorney for Appellants.

WM. F. HERRIN,
Counsel for Appellants.

Order Allowing Appeal and Supersedeas.

The foregoing claim of appeal and prayer for supersedeas are allowed and granted; the supersedeas to take effect upon the filing of a good and sufficient bond in the sum of two thousand dollars, conditioned that the appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good.

It is further ordered that a transcript of the record, proceedings and papers upon which the said decree was made, under the seal of this Court and the hand of its Clerk, be sent to the Supreme Court of the United States.

San Francisco, November 3d, 1904.

WM. B. GILBERT,

Judge.

[Endorsed]: Original. No. 1045. U. S. Circuit Court of Appeals, Ninth Circuit. Southern Pacific Railroad Co. et al. vs. The United States. Petition and Order for Appeal. Filed November 3, 1904. F. D. Monckton, Clerk. Wm. Singer, Jr., No. 49 Second St., San Francisco, Cal., Atty. for Appellants.

In the United States Circuit Court of Appeals, Ninth Circuit.

SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Appellants,
vs.
THE UNITED STATES,
Appellee.
No. 1045.

Assignment of Errors.

The above-named appellants, by their undersigned attorney and counsel, in connection with their petition for appeal herein, say that the decree of this Court in the above-entitled cause, made and entered on October 17th, 1904, is erroneous and against their just rights in the following particulars; that is to say:

I.

(a). The Court erred in finding, or determining (by affirming the decree of the Circuit Court), that all or any of the lands described in the decree of the Circuit Court (Vol. I, 114-121), affirmed by the said decree of this court were sub judice at the time the grant to the appellant Southern Pacific Railroad Company, by Act of Congress of March 3d, 1871, took effect.

(b). The Court erred in finding or determining (by affirming the decree of the Circuit Court), that all or any of the lands described in the said Circuit Court decree, were excepted from the grant to the appellant

Southern Pacific Railroad Company, made by the said Act of Congress of March 3d, 1871.

(c). The Court erred in finding, or determining (by affirming the decree of the Circuit Court), that all or any of the lands described in the said Circuit Court decree, were erroneously, by mistake, or improvidently, patented to the appellant Southern Pacific Railroad Company; and in this behalf the Court erred in not finding that each and all of such patents were duly and properly issued by the United States unto the appellant Southern Pacific Railroad Company.

II.

(a). The Court erred in ordering, adjudging or decreeing that the United States is the absolute owner by title in fee simple or otherwise, of all or any of the lands described in the said Circuit Court decree.

(b). The Court erred in ordering, adjudging or decreeing, that the appellants Southern Pacific Railroad Company, Central Trust Company of New York, D. O. Mills and Homer S. King as trustees, have no right, title, interest or estate in or to the lands described in "Section 2" of the said Circuit Court decree; and in this behalf the Court erred in not ordering, adjudging and decreeing that the appellant Southern Pacific Railroad Company, is the owner by title in fee simple and absolute, subject to the trust mortgages of the appellants, Central Trust Company of New York, D. O. Mills and Homer S. King as trustees, of all the said lands.

(c). The Court erred in ordering, adjudging or decreeing all or any patents issued by the United States

to the appellant, Southern Pacific Railroad Company, conveying or purporting to convey all or any of the lands described in "Section 2" of the said Circuit Court decree, vacated or null.

III.

The Court erred in ordering, adjudging or decreeing that the appellant, Southern Pacific Railroad Company, is indebted to the United States in the sum of $1.25 per acre, or in any sum, as money realized from the sale of lands described in "Section 3" of the said Circuit Court decree, or otherwise.

IV.

The Court erred in ordering, adjudging or decreeing that the appellant, Southern Pacific Railroad Company, is indebted to the United States in the sum of $1.25 per acre, or in any sum, as money realized from the sale of lands described in "Section 4" of the said Circuit Court decree, or otherwise.

V.

The Court erred in ordering, adjudging or decreeing that the appellant, Southern Pacific Railroad Company, is indebted to the United States in the sum of $1.25 per acre, or in any sum, as money realized from the sale of lands described in "Section 5" of the said Circuit Court decree, or otherwise.

VI.

The Court erred in ordering, adjudging or decreeing that the appellant, Southern Pacific Railroad Company, is indebted to the United States in the sum of $1.25 per acre, or in any sum, as money realized from the sale of

lands described in "Section 6" of the said Circuit Court decree, or otherwise.

VII.

The Court erred in ordering, adjudging or decreeing that the appellant, Southern Pacific Railroad Company, is indebted to the United States in the sum of $1.25 per acre, or in any sum, as money realized from the sale of lands described in "Section 7" of the said Circuit Court decree, or otherwise.

VIII.

The Court erred in ordering, adjudging or decreeing that the appellant, Southern Pacific Railroad Company, is indebted to the United States in the sum of $1.25 per acre, or in any sum, as money realized from the sale of lands described in "Section 8" of the said Circuit Court decree, or otherwise.

IX.

The Court erred in ordering, adjudging or decreeing that the appellant, Southern Pacific Railroad Company, is indebted to the United States in the sum of $1.25 per acre, or in any sum, as money realized from the sale of lands described in "Section 9" of the said Circuit Court decree, or otherwise.

X.

The Court erred in ordering, adjudging or decreeing that the appellant, Southern Pacific Railroad Company, is indebted to the United States in the sum of $1.25 per acre, or in any sum, as money realized from the sale of lands described in "Section 10" of the said Circuit Court decree, or otherwise.

XI.

The Court erred in ordering, adjudging or decreeing that the appellant, Southern Pacific Railroad Company, is indebted to the United States in the sum of $1.25 per acre, or in any sum, as money realized from the sale of lands described in "Section 11" of the said Circuit Court decree, or otherwise.

XII.

The Court erred in ordering, adjudging or decreeing that the appellant, Southern Pacific Railroad Company, is indebted to the United States in the sum of $1.25 per acre, or in any sum, as money realized from the sale of lands described in "Section 12" of the said Circuit Court decree, or otherwise.

XIII.

The Court erred in ordering, adjudging or decreeing that the appellant, Southern Pacific Railroad Company, is indebted to the United States in the sum of $1.25 per acre, or in any sum, as money realized from the sale of lands described in "Section 13" of the said Circuit Court decree, or otherwise.

XIV.

(a). The Court erred in ordering, adjudging or decreeing that the United States have or recover of or from the appellant, Southern Pacific Railroad Company, the sum of $1581.22, or any sum whatever, with interest at the rate of seven per cent per annum from the date of said Circuit Court decree, or with any interest.

(b). The Court erred in ordering, adjudging or decreeing that the United States have or recover of or

from the appellant, Southern Pacific Railroad Company, costs herein taxed by the Circuit Court decree at $80.70, or any costs.

(c). The Court erred in ordering, adjudging or decreeing that execution issue against the appellant, Southern Pacific Railroad Company, for the sums stated in "Section 14" of the said Circuit Court decree, for either or any of said sums, or for any sum whatever.

XV.

Wherefore, the appellants pray that the said decree be reversed in all the respects and particulars herein assigned or specified as error; and that the said Circuit Court be directed to enter a decree dismissing the bill of complaint of the plaintiff.

WM. SINGER, Jr.,
Attorney for Appellants.

WM. F. HERRIN,
Counsel for Appellants.

[Endorsed]: No. 1045. U. S. Circuit Court of Appeals, Ninth Circuit. Southern Pacific Railroad Co. et al. vs. The United States. Assignment of Errors. Filed November 3, 1904. F.D. Monckton, Clerk. Wm. Singer, Jr., No. 49 Second St., San Francisco, Cal., Atty. for Appellants.

In the United States Circuit Court of Appeals, Ninth Circuit.

SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Appellants,
vs.
THE UNITED STATES,
Appellee.
No. 1045.

Bond on Appeal.

The undersigned, N. T. Smith, of San Mateo County, State of California, and C. H. Redington, of Alameda County, State of California, are held and firmly bound unto the United States of America, in the sum of two thousand (2,000) dollars, for payment of which, well and truly to be made, they bind themselves, their and each of their heirs, executors and administrators, jointly, and severally, firmly by these presents.

The above-named appellants have been allowed an appeal to the Supreme Court of the United States, and a supersedeas, from the decree entered in the above-entitled court and cause on October 17th, 1904; and the condition of this obligation is, that if the appellants shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make their appeal good then this obligation to be void; otherwise to remain in full force.

Dated, signed, and sealed on October 31st, 1904.

N. T. SMITH. [Seal]
C. H. REDINGTON. [Seal]

Acknowledged before me on October 31st, 1904.

[Seal] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

State of California,
City and County of San Francisco. } ss.

N. T. Smith and C. H. Redington, being duly sworn, each for himself deposes and says: I am a householder in the Northern District of California, and am worth the sum of two thousand (2,000) dollars, exclusive of property exempt from execution, and over and above all my just debts and liabilities, in property within the said district.

N. T. SMITH.

C. H. REDINGTON.

Subscribed and sworn to before me on October 31st, 1904.

[Seal] E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

The foregoing bond is approved.

WM. B. GILBERT,
Judge.

[Endorsed]: No. 1045. U. S. Circuit Court of Appeals, Ninth Circuit. Southern Pacific Railroad Co. et al. vs. The United States. Bond on Appeal. Filed, November 3, 1904. F. D. Monckton, Clerk. Wm. Singer, Jr., No. 49 Second St., San Francisco, Cal., Atty. for Appellants.

United States Circuit Court of Appeals for the Ninth Circuit.

SOUTHERN PACIFIC RAILROAD COMPANY, CENTRAL TRUST COMPANY OF NEW YORK, D. O. MILLS, and HOMER S. KING, as Trustees, Appellants,

vs.

THE UNITED STATES, Appellee.

No. 1045.

Certificate of Clerk U. S. Circuit Court of Appeals to Proceedings, etc.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing thirty-one (31) pages, numbered from one (1) to thirty-one (31) inclusive, to be a true copy of the assignment of errors and of all proceedings had in the above-entitled case in the said the United States Circuit Court of Appeals for the Ninth Circuit, including the opinion filed, as the same remain of record in my office, and that the same in connection with the preceding certified copy of the printed transcript of record upon appeal from the United States Circuit Court for the Southern District of California, constitute a true copy of the printed record upon which the above-entitled case was heard in the said Circuit Court of Appeals and of all proceedings had therein, and the transcript of record upon appeal to the Supreme Court of the United States in the above-entitled case.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 30th day of November, A. D. 1904.

[Seal] F. D. MONCKTON,
Clerk.

Citation.

UNITED STATES OF AMERICA—ss.

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., on December 30th, 1904, pursuant to an appeal filed in the clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, wherein the Southern Pacific Railroad Company and others are appellants and The United States is appellee, to show cause, if any there be, why the decree rendered on October 17th, 1904, by the said United States Circuit Court of Appeals against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand, at the city of San Francisco, in the Ninth Circuit, on November 3d, 1904.

WM. B. GILBERT,
Judge.

Due service of the foregoing citation, by copy admitted on November 5th, 1904.

JOSEPH H. CALL,
Special Assistant U. S. Attorney.

[Endorsed]: No. 1045. U. S. Circuit Court of Appeals, Ninth Circuit. Southern Pacific Railroad Co. et al. vs. The United States. Citation. Filed Nov. 21, 1904. F. D. Monckton, Clerk. Wm. Singer, Jr., No. 49 Second St., San Francisco, Cal., Atty. for Appellants.

FILE COPY.

Supreme Court of the United States.

OCTOBER TERM, 1905.

Office Supreme Court U. S.
FILED
JAN 15 1906
JAMES H. McKENNEY,
Clerk.

No. 142.

THE SOUTHERN PACIFIC RAILROAD COMPANY, CENTRAL TRUST COMPANY OF NEW YORK, D. O. MILLS and HOMER S. KING, as Trustees,
Appellants,

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE APPELLANTS.

MAXWELL EVARTS,
Of Counsel for Appellants.

C. G. BURGOYNE, Walker and Centre Streets, N. Y.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 142.

THE SOUTHERN PACIFIC RAILROAD COMPANY, CENTRAL TRUST COMPANY OF NEW YORK, D. O. MILLS and HOMER S. KING, as Trustees,
Appellants,

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE APPELLANTS.

Statement.

A bill was filed in this cause by the United States in the Circuit Court of the United States for the Southern District of California on February 28, 1901, which purported to be for the

purpose of quieting its title to certain lands mentioned therein, but was in effect for the purpose of recovering the value of the land which was claimed by the government to have been erroneously patented to the railroad company and thereafter sold by the latter to *bona-fide* purchasers. The land in question fell within the place limits of the so-called Branch Line grant to the Southern Pacific Railroad Company under the 23d section of the Act of Congress of March 3, 1871, entitled "An Act to Incorporate the Texas and Pacific Railroad Company, and to aid in the construction of its road, and for other purposes." The following facts were established on the trial of the case, and there is no dispute in the testimony in regard thereto:

One Juan Bandini received from the Mexican Government, a grant of what is termed the Rancho Jurupa in September, 1838. The boundaries of this grant were designated in a diagram which accompanied the petition made by Bandini requesting the grant, and the land granted, was, to use the words of the grant "purely that which is expressed in the petition of the party interested, and is sketched in the diagram" (Record, pp. 150, 151).

The boundaries of the grant are given in the document giving Bandini possession of the land, which paper is dated December 10, 1838 (Record, pp. 151, 156), and afterwards, on May 30, 1840, the grant of the Mexican Government to Bandini was approved by the Departmental Assembly (Record, p. 157).

After California was acquired under the Treaty of Guadalupe Hidalgo, concluded February 2, 1848, commissioners were appointed by Congress for the adjudication and settlement of California land claims under the Act approved March 3, 1851, and entitled "An Act to ascertain and settle the private land claims in the State of California" (9 U. S. Stats., at L. 631).

To this tribunal Bandini on September 25, 1852, presented his petition, asking that his claim to said land under the Mexican grant should be confirmed, and to his petition, he attached copies of the original Grant, the Act of Judicial Possession, and the Act of Approval, executed by and on behalf of the Mexican Government. In this petition Bandini specifically stated the boundaries of his claim and grant, in accordance with the boundaries of the original grant, as described in the Act of Judicial Possession received

from the Mexican Government (Record, p. 157).

After hearing the proofs and allegations in the matter, the Commission, on October 17, 1854, adjudged that the claim of the petitioner was valid, and it was decreed that the same should be confirmed. The decree of confirmation described the boundaries of the Rancho Jurupa in the same terms that it had been described in the petition and in the Grant and in the Act of Judicial Possession of the Mexican Government of 1838 (Record, p. 159).

Thereafter, an appeal was taken by the United States to the District Court for the Southern District of California, and on April 5, 1861, the decision of the Board of Land Commissioners of October 17, 1854, was affirmed. In the decree of confirmation the boundaries were again given substantially in the same language in which they appear in the original Mexican Act of Judicial Possession of December 10, 1838, and it was further expressly provided in said decree "that the lands of which confirmation is hereby made are * * * within the boundaries designated in the Judicial Possession given of said lands to Juan Bandini" (Record, p. 163).

Between the time of the decision of the Commission in 1854, and the decree of the District Court of the United States of April 5, 1861, confirming such decision, Abel Stearns acquired all the right, title and interest of Bandini in the Rancho Jurupa, and an order was entered in the proceeding on March 6, 1860, substituting the name of Stearns as appellee in the place of Bandini (Record, p. 187).

Thereafter and on May 1, 1862, an appeal was taken by the United States from the decree of the District Court, to this Court (Record, p. 196), as also appears from the mandate of this Court, dated January 8, 1875 (Record, p. 507), and pursuant to said mandate, an order was entered in the United States District Court on March 2, 1875, directing that the claimant "have leave to proceed under the decree of confirmation heretofore entered herein as under final decree" (Record, p. 510).

Pending the appeal by the Government to this Court, a survey was made of the Jurupa Grant which will be hereafter referred to in this brief as the Reynolds Survey. This survey was begun in June, 1869 (Record, p. 359, *et seq.*). The north line of the Reynolds Survey of the Rancho

Jurupa is indicated by the red line on the opposite map. The plat and field notes of the survey were duly filed with the United States Surveyor General for the district of California, and in the office of the Commissioner of the General Land Office, on February 26, 1872 (Record, p. 90).

The Reynolds Survey was never approved by the Interior Department. Shortly after the filing of the plat and field notes of the survey, the Commissioner of the General Land Office seemed to have some doubt as to the correctness of the survey, and wrote to the United States Surveyor General of California on August 8, 1872, as follows (Record, p. 294):

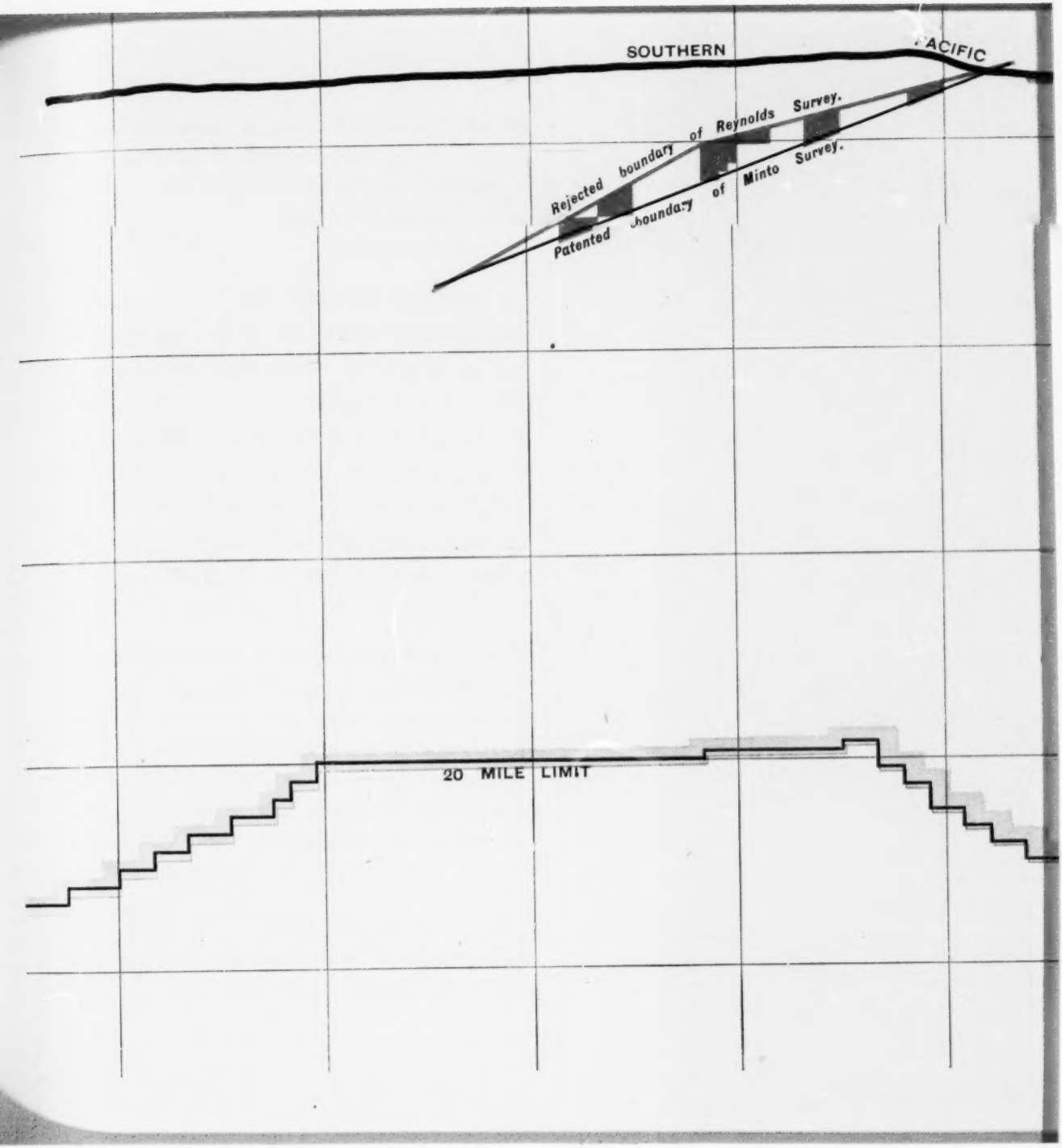
"DEPARTMENT OF THE INTERIOR.
General Land Office.
Washington, D. C.

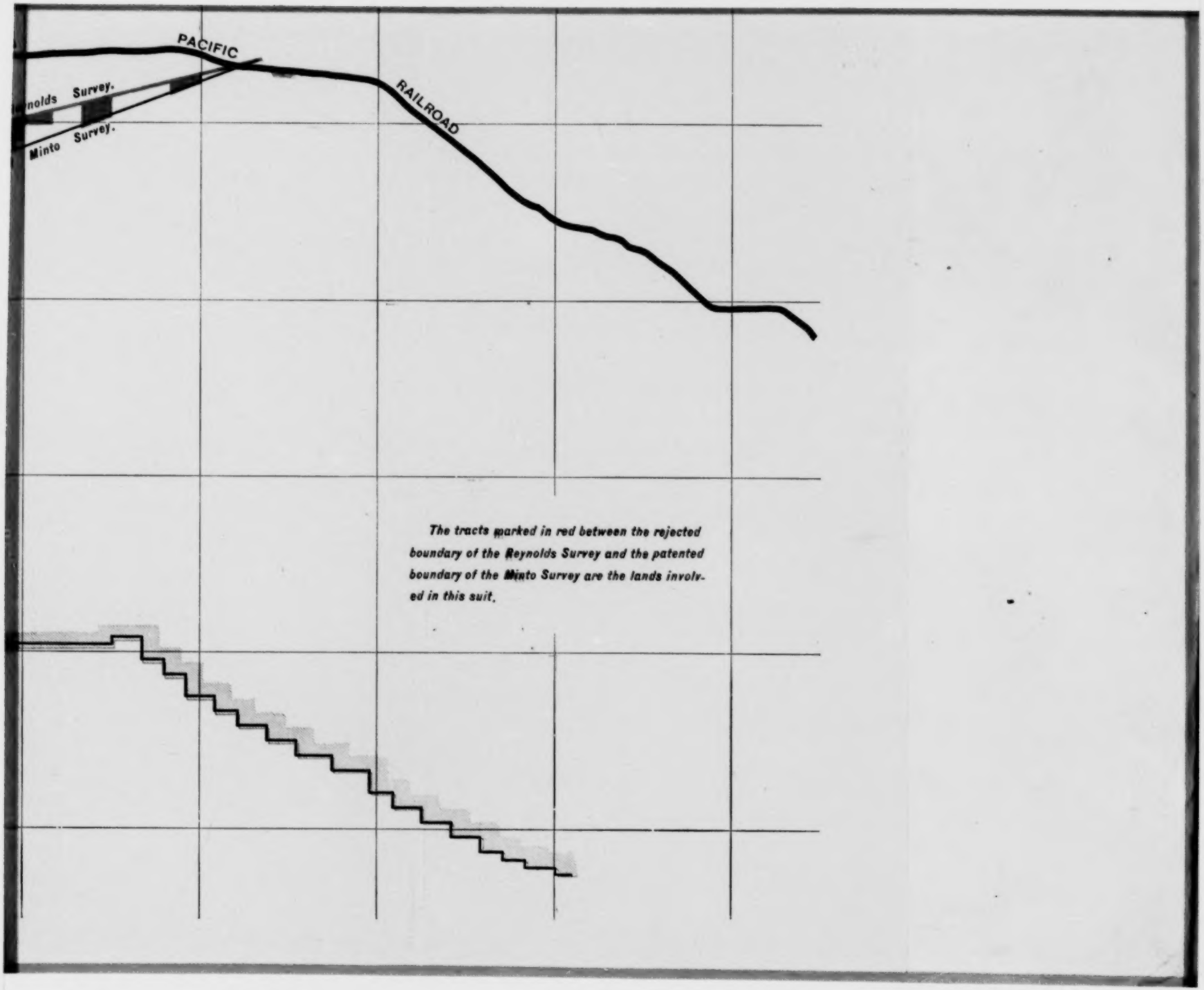
8th August, 1872.

J. R. Hardenbergh, Esq.,
U. S. Sur. Genl., Cala.,
San Francisco.

Sir:

Referring to the case of rancho "Jurupa" in Cala. Juan Bandini conf. L. C. No. 361, I have to request that you procure at the expense of the parties interested and trans-


SOUTHERN
PACIFIC
Rejected boundary of Reynolds Survey.
Patented boundary of Minto Survey.
20 MILE LIMIT


PACIFIC
RAILROAD
nolds Survey.
Minto Survey.
The tracts marked in red between the rejected boundary of the Reynolds Survey and the patented boundary of the Minto Survey are the lands involved in this suit.

mit the same to this office, a copy of the final decree of Court on *title*.

Very respectfully, your obt. Servant,
Willis Drummond,
Commissioner."

This correspondence continued from time to time as appears from the letters which passed between the various parties in regard to the matter which are set forth at pages 202, 203, 287 and 317 of the Record. Finally in the letter of the Acting Commissioner of the General Land Office to the United States Surveyor General of California dated May 13, 1876, the Reynolds survey was rejected in the following words (Record, 324, 336):

> "The survey is therefore rejected and I return herewith the report and exhibit of H. C. Hopkins, Esq., with instructions to amend the survey as you will give notice of this decision to all parties in interest allowing sixty days from notice for appeal and promptly report any subsequent action in the premises."

At the time of this survey there was no final confirmation of this grant, as an appeal was pending in this court from the decree of the

District Court, and whether such survey was made under the Act of Congress of July 1, 1864 (13 U. S. Stat., 332), or the Act of Congress of July 23, 1866 (14 U. S. Stat., 218), it was not authorized to be made until a final confirmation of the grant.

On February 21, 1877, Mr. Chandler, the then Secretary of the Interior, disapproved of the Reynolds Survey, and ordered a new survey of the grant (Record, p. 205), which was commenced on the 23d day of March, 1878 (Record, p. 217). This survey is hereafter called in this brief the Minto Survey. It is to be noticed that in this letter of the Secretary of the Interior, the decree of juridical possession of 1838 of the Mexican Government is quoted at length. Under the Minto Survey, the north line of the Jurupa Grant is indicated by a black line on the attached map. On May 23, 1879, Stearns received his patent for the Jurupa ranch as surveyed in accordance with the Minto Survey (Record, p. 395).

The land in question is marked in red on the map between the two north lines of the Reynolds and Minto surveys, and the important question that presents itself in this case is, whether the land between the incorrect northern line of the

Reynolds Survey and the correct northern line of the Minto Survey, is to be deemed *sub judice* at the time of the grant to the Southern Pacific Railroad Company under the Act of 1871, and at the date of the definite location of its line of railroad in 1874, and therefore excepted from such grant, or whether such land fell within the grant to the Railroad Company, and was properly patented to it by the Government in 1897 (Record, p. 92).

On November 20, 1900, the Commissioners of the General Land Office demanded a reconveyance by the Southern Pacific Railroad Company to the United States of the land in question (Record, p. 354). In this demand, the land was described as "between the *claimed* and the patented limits of the Mexican grant Jurupa." The Southern Pacific Railroad Company declined to make such reconveyance, as in its understanding of the matter, the land in question had never been *claimed* to be within the Rancho Jurupa. Thereupon the bill was filed herein by the United States (Record, p. 5). An answer was filed by the Railroad Company (Record, p. 82). The case was tried and a decree was entered in favor of the United States (Record, p. 114).

From this decree in the Circuit Court, an appeal was taken to the Circuit Court of Appeals, for the Ninth Circuit, which entered a decree on October 17, 1904, affirming the decree of the Court below. From the decree of the Circuit Court of Appeals, this appeal has been taken, and the single question presented upon this brief will be, whether land to which no claim has ever been made under any Mexican grant or otherwise, is to be deemed *sub judice* at the time of the Branch Line grant of 1871 to the appellant, because of the fact that a surveyor had at that time, made an error in running his line upon the face of the earth, and had improperly included the land within his survey of the Jurupa Grant.

While there are other questions of importance in this case besides the question of whether the lands in suit were *sub judice* at the time of the grant to the Railroad Company in 1871, all such questions are also involved in suit No. 141 on this docket, which will be argued at the same time with this case. We therefore respectfully refer the Court to our brief in that case on those questions, if we should be unsuccessful in our position as to the land in controversy not being *sub judice* at the time of the grant

to the appellant Railroad Company. It seemed unnecessary to repeat the argument in both briefs.

Specification of Errors.

The appellants allege that the Circuit Court of Appeals erred in the following particulars:

I.

In holding that the United States was the absolute owner in fee simple of the land involved in this case.

II.

In not holding that the Southern Pacific Railroad Company was the owner in fee simple of said land.

III.

In decreeing that the patents issued by the United States to the appellant Southern Pacific Railroad Company conveying said land should be vacated, annulled and set aside.

IV.

In holding that said land was *sub judice* at the time the grant to the appellant Southern Pacific Railroad Company under the Act of Congress of March 3, 1871, took effect.

V.

In holding that said land was excepted from said grant to the Southern Pacific Railroad Company.

VI.

In holding that said land was erroneously or improperly patented to the appellant.

VII.

In not finding that the patents for said lands were duly and properly issued by the United States to the Southern Pacific Railroad Company.

VIII.

For the specifications of error on the questions involved in this case not relating to whether the land in question was *sub judice* at the time of the grant to the Railroad Company of 1871, we respectfully refer the Court to our brief in case No. 141.

FIRST POINT.

The lands in question were not sub judice at the time of the grant to the Southern Pacific Railroad Company under the Act of 1871, for the reason (1) that an appeal was pending to this Court from the decree of the United States District Court for the Southern District of California of April 5, 1861, and that therefore the Reynolds survey was unauthorized. (2) That, even if such survey was authorized, the error of a surveyor in running his lines on the face of the earth does not make land improperly included in his survey by such error sub judice.

I.

There is no dispute that an appeal was taken to this Court by the government from the decree of the United States District Court of California confirming the decision of the Commission in favor of the Mexican grant to Bandini. This is shown by the minutes of the proceedings in the District Court showing the appeal to have been taken May 1, 1862 (Record, p. 196), by the man-

date of this Court, dated January 8, 1875 (Record, p. 507), and the order of the District Court, dated March 2, 1875, giving the claimant leave to proceed under the decree of confirmation theretofore entered therein as under final decree (Record, p. 510).

An examination of the statutes under which this survey was made shows that the Surveyor General of California could not act in the matter of making a survey in pursuance of any determination of any private land claim, until such private land claim had been finally confirmed. As we understand it, the Reynolds Survey was made in pursuance of sections 6 and 7 of the Act of July 1, 1864 (13 U. S. Stats., 332). The Act in its earlier sections provides for an appeal to the Federal Court and then continues in sections 6 and 7 as follows:

> "SEC. 6. And be it further enacted, That it shall be the duty of the surveyor-general of California to cause all the private land claims *finally confirmed* to be accurately surveyed and plats thereof to be made, whenever requested by the claimants. * * * Whenever the survey and plat requested shall have been completed and forwarded to

the commissioner of the general land-office, as required by this act, the district court may direct the application of the money deposited, or so much thereof as may be necessary, to the payment of the expenses of said survey and publication.

SEC. 7. And be it further enacted, That it shall be the duty of the surveyor-general of California, in making surveys of the private land claims *finally confirmed*, to follow the decree of confirmation as closely as practicable whenever such decree designates the specific boundaries of the claim. * * * And it shall be the duty of the commissioner of the general land-office to require a substantial compliance with the directions of this section before approving any survey and plat forwarded to him."

It was claimed by the government in the court below and will probably be claimed here that the Reynolds Survey was made under the authority of section 8 of the Act of Congress of July 23, 1866 (14 U. S. Stat., 218). This section is as follows:

"SEC. 8. *And be it further enacted*, That in all cases where a claim to land by virtue of a right or title derived from the Spanish

or Mexican authorities has been *finally confirmed*, and a survey and plat thereof shall not have been requested within ten months from the passage of this act, as provided by sections six and seven of the act of July first, eighteen hundred and sixty-four, 'To expedite the settlement of titles to lands in the State of California,' and in all cases where a like claim shall hereafter be *finally confirmed*, and a survey and plat thereof shall not be requested, as provided by said sections within ten months after the passage of this act, or any *final confirmation* hereafter made, it shall be the duty of the surveyor-general of the United States for California, as soon as practicable after the expiration of ten months from the passage of this act, or such *final confirmation* hereafter made, to cause the lines of the public surveys to be extended over such land, and and he shall set off, in full satisfaction of such grant, and according to the lines of the public surveys, the quantity of land confirmed in such final decree, and as nearly as can be done in accordance with such decree; and all the land not included in such grant as so set off shall be subject to the general land laws of the United States: Provided, That nothing in this act shall be construed

so as in any manner to interfere with the right of *bona fide* pre-emption claimants."

It is immaterial whether the Reynolds Survey was made under the Act of 1864, or under the Act of 1866. Both of those acts required a *final confirmation* of the claim before any survey, and the question is what is meant by the words "final confirmation" or "finally confirmed." As we read the statute, these words mean and necessarily mean that no survey is to be made while there is any proceeding in court. It is unreasonable to suppose that Congress, when it used those words, intended that a survey should be made when the decree awarding the claim might at any moment be reversed on appeal. The reasonable construction of these statutes would seem to be that when all litigation had ceased as to private land claims, then the Surveyor General of the United States for the District of California was authorized to make a survey, after the expiration of ten months from the time of final confirmation. The purpose of these acts as to such survey was to enable the government to determine just what public land it had subject to the general land laws of the United States. It could not do this unless it surveyed those lands

covered by claims which took them out of the public domain. The expense and labor of such survey was not to be undertaken until it was plain by a final decree of confirmation which could not be disturbed by appeal or otherwise that the private grant excepted the lands from the public domain.

The proposition that the decree of the District Court was not final within the meaning of the statute, while the appeal to this court was pending, hardly needs an authority to support it, but it was so held by Secretary Noble, in the case of *Childs* vs. *S. P. R. R. Co.*, 10 L. D., 630, 632, where he said:

> "The grant San Jacinto Nuevo was confirmed by the district court February 14, 1856, which decree of confirmation became final upon the dismissal by the supreme court of the appeal February 23, 1857."

That the decree of the District Court was not final within the meaning of the statute is certainly indicated by the language of this Court in *Newhall* vs. *Sanger*, 92 U. S., 761, 763, where it was said, referring to the Commission appointed by the Act of 1851, as follows:

"This was notice to all the world that lands in California were held in reserve to afford a reasonable time to the claimant under an asserted Mexican or Spanish grant to maintain his rights before the commission. He was not bound by its adverse decision; but was entitled to have it reviewed by the District Court, with a right of ultimate appeal to the Supreme Court. If he, however, neglected to take timely and proper steps to obtain such review, the decision was thereby rendered final and conclusive. The lands then fell into the category of public lands. The same remark will apply to the judgment of the District Court; *but if he prosecuted his appeal to the tribunal of last resort*, the reserved lands retained their original character in all the successive stages of the cause, and they were regarded as forming a part of our national domain only after the claim covering them had been '*finally decided to be invalid.*'"

It may be insisted that the appeal of the United States from the decree of the District Court of April 5, 1861, was never perfected, and therefore should be given no consideration here, by reason of the clause in the mandate of January 8, 1875 (Record, p. 507), to the effect that

the appellant had failed to have its cause filed and docketed in accordance with the rules of this Court, yet it is clear that the appeal prevented the decree of the District Court from being final, and that the order of March 2, 1875, was required in the District Court before the claimant was given leave to proceed under the decree of confirmation of April, 1861, as under final decree.

We, therefore, respectfully submit that there was no final confirmation of the claim of Abel Stearns to the Jurupa grant at the time of the Reynolds Survey, and that said survey must be deemed to have been unauthorized, and the land in controversy not to have been *sub judice*, inasmuch as said land was not involved in said appeal, which included only the land within the true limits and boundaries of the Jurupa grant.

II.

LAND NOT CLAIMED TO BE WITHIN A MEXICAN GRANT BUT INCLUDED BY MISTAKE IN AN ERRONEOUS SURVEY OF SUCH GRANT IS NOT SUB JUDICE.

There is no evidence in the record that Bandini or Abel Stearns, his successor in interest, ever made any claim that the lands in controversy were within the limits of the Jurupa

Grant. On the contrary, the evidence would seem to show that Bandini and Stearns never claimed anything beyond the boundaries of the grant from Mexico, which were clearly defined, and which were accurately laid out on the surface of the earth by the survey of Minto. No controversy as to the confirmed boundaries was ever presented to the Commissioners or the District Court, but on the contrary the decrees confirm and the patent conveys the Jurupa ranch as *claimed and prayed.* In other words, the grantee received all he asked and claimed, and the lands in question were not within what he claimed. We have, therefore, presented the simple question whether land not claimed by the grantee to be within the limits of his grant can be deemed to be *sub judice* for the reason that the surveyor, in running out the lines of the boundaries of the grant, made an error, and by mistake included within his survey of the grant, land never claimed by the grantee or anybody else to be within its boundaries.

The question under judicial consideration or *sub judice* was whether Bandini or his successor Stearns was entitled to the Mexican grant of the Jurupa ranch of 1838. This question was finally

decided by the United States District Court either in 1861 (if the Court does not consider that the appeal of the government to this Court was effective) or in March, 1875, in favor of the claimant, and all judicial consideration of the subject was ended. The survey made by Reynolds in 1869 had no connection with the decree of the District Court, and was not undertaken for the purpose of carrying out its terms. Such survey was made simply for the assistance of the General Land Office and to enable it to accurately prepare and issue a patent for the grant. In Section 13 of the Act of Congress of March 3, 1851 (9 U. S. Stat., 631, 633), it was provided that,

> "for all claims *finally confirmed* by the said commissioners, or by the said District or Supreme Court, a patent shall issue to the claimant upon his presenting to the general land office an authentic certificate of such confirmation, and a plat or survey of the said land, duly certified and approved by the surveyor-general of California, whose duty it shall be to cause all private claims which shall be *finally confirmed* to be accurately surveyed, and to furnish plats of the same."

From the statute cited it will be seen that the

survey was made, not with relation to the decree and as part of the proceeding in which it was entered, but for the convenience of the General Land Office in preparing and issuing a patent for the land. Such survey was a mere ministerial act, which can hardly be construed into a judicial consideration of the matter. The judicial consideration of the grant terminated with the decree of the court in favor of the claimant, and the survey was but a preliminary step to obtaining the patent for the land in the General Land Office, and not a step in the judicial proceeding subsequent to and in aid of the decree therein.

No case has been found in this Court or the lower courts, or in the Land Decisions, although a thorough search therefor has been made, holding that land not claimed by any grantee of a Mexican grant, but by mistake of a surveyor included within the survey thereof, at the time of the grant of such land to a railroad, is *sub judice*, and therefore did not pass to the railroad company. None of the cases referred to by the court below or in the briefs of counsel for the Government so hold. In any case which approaches this question, the land included within the survey is claimed by the

grantee of the Mexican grant to belong to him under the grant, and there is, therefore, a matter for judicial consideration, but in the case at bar no such claim is made. Nowhere in the record is it insisted that the land in controversy was part of the grant and properly included in the survey. There is, therefore, nothing for judicial consideration, but the fact is simply, that the surveyor who ran the lines of the grant, made a mistake, and improperly included land within the boundaries of the grant, which no one ever claimed should have been so included.

In its opinion, the court below (Record, p. 652), has relied upon the case of *Newhall* vs. *Sanger*, 92 U. S. 761, and the cases following that decision, as authority for the proposition that the lands in controversy were *sub judice* at the time of the grant to the Railroad Company, by reason of the Reynolds Survey, begun in 1869. As we understand these cases, they do not pretend to so hold, but simply sustain the point that if a claim under a Mexican grant is made to land at the time of its grant to a railroad company, and is then under consideration, no matter whether such claim is ultimately held valid or not, that such land is withdrawn from the railroad grant

by reason of its being then under judical consideration.

What was decided in the Newhall case is very clearly stated by Mr. Justice BREWER, in the case of *Whitney* vs. *Taylor*, 158 U. S. 85, 92, where he says that the Newhall case was one in which,

> "the mere existence of an alleged Mexican grant, valid or invalid, and the validity of which was under investigation before the *proper tribunal* at the time of the filing of the map of definite location of one of the Pacific roads * * * was held to exclude all lands within its boundaries from the operation of the congressional grant."

It is to be noted that the decision in the Newhall case is based upon the proposition that there was an investigation pending before the proper tribunal in regard to the Mexican grant. In the case at bar, at the time of the grant to the Railroad Company in 1871, there was no investigation as to the Jurupa grant pending before any tribunal (assuming for the purposes of the argument that the appeal to this Court is not to be considered), it having already been decided many years before, that the grantee was entitled to all that he claimed under the Mexican grant, and in

the investigation which was had the land in question was not involved because not claimed in any way.

In the case of *Doolan* vs. *Carr*, 125 U. S., 618, the facts are not similar at all to the facts in the present case, as is said by the court below at page 655 of the Record. On the contrary, in the Doolan case, the land in question was not within the survey, but was claimed by the grantee of the Mexican grant to be within its boundaries, and therefore at that time, the land was clearly *sub judice* and within the Newhall decision. That is to say, the Doolan case is the reverse of the case at bar. There it was claimed that the survey did not include the land to which the claimant was entitled under its Mexican grant. In this case there is no claim whatever to the land in controversy, but it was simply included within the limits of the Rancho Jurupa by a mistake of a surveyor in running his lines.

In *Cameron* vs. *U. S.*, 148 U. S., 301, the Court held that the land in question was *sub judice* for the reason, as was said at page 307,

> "That the defendant had succeeded to all the rights of Romero in the grant, and was and has been in possession of all the build-

> ings on the four square leagues surveyed by the surveyor general and claimed, and had always claimed title to the possession of all the land within the exterior boundaries as measured in the expediente, claiming title thereto; 'that the report of the said surveyor general upon said grant has never been finally acted upon by Congress; *and that said claim and said report are still pending before Congress.*'
>
> "Upon proof of the foregoing facts, we think it clear, that defendant established a color of title to the lands in question."

In the Cameron case, the grantee under the Mexican grant made a claim to the land in question, and the Court specifically stated that because of that fact, the defendant established a color of title to the lands, and that they were therefore *sub judice* and great stress is laid upon this in the opinion of Mr. Justice BROWN, where it is said, "the claim and report are still pending before Congress; in other words that the claim is *sub judice*" (p. 311). That is to say, the decision is rested upon the ground that a claim was made to the land. Here there was no claim made to the land.

We therefore insist that the foregoing cases cited by the court below do not sustain the prop-

osition that where a claim has been allowed and there is no longer any question open in regard to it, and the surveyor in running his lines makes a mistake and includes lands not within, nor claimed to be within, the boundaries of the allowed claim, such lands are *sub judice* in any proper construction of the meaning of that term. There is no discussion in regard to the lands in controversy, no claim made to them, nothing relating to the lands for judicial consideration, and we respectfully submit that to stretch the meaning of *sub judice* so as to include a mere error of a surveyor performing a ministerial act is not warranted by the decision of any court.

The case in the Circuit Court of Appeals for the Ninth Circuit of *Southern Pacific Railroad Co.* vs. *Brown*, 75 Fed. Rep., 85, which is referred to in the court below, does not seem to touch the question now before the Court. In that case, there was some evidence that Abel Stearns claimed the particular land then in controversy. Such claim is made the basis of the decision of the Circuit Court of Appeals, the reasoning of the court being that the land was *sub judice* by reason of this claim of Stearns. In the present case, however, as to the particular land now in suit,

there is no evidence that there ever was any such claim, and if there is any evidence upon the subject at all in the record, it is to the effect that there was no such claim made by Mr. Stearns, or his predecessor in interest, Juan Bandini.

The Interior Department felt constrained to follow the decision of the Circuit Court of Appeals just cited in its determination of a case arising in regard to the Jurupa grant (25 L. D., 108), but prior to such decision of the Circuit Court of Appeals, Secretary Noble and Assistant Secretary Chandler, had both held (11 L. D., 538 and 12 L. D., 664), that a survey of a private land claim did not operate to segregate the land covered thereby from the public domain. In the case of *Duncanson* vs. *S. P. R. R. Co.*, 12 L. D., 664, 666, it was said:

> "The only question which remains to be answered is this: Was the tract claimed by Duncanson within the specified or identified limits of the Jurupa grant? A negative answer would seem to be sufficient, based upon the fact that the survey, upon which a patent issued, excluded said tract.
>
> "If it should be held that an erroneous survey of the boundaries of a private grant which embraced a tract of land a few rods

> outside the actual boundaries, could reserve the land from other appropriation, it must be held, that a like survey which embraced land a few miles outside the boundaries would also reserve said land in like manner, a doctrine which is most emphatically denied by the court in the cases herein cited."

The position of the appellants in the case at bar is, that the decision of the Circuit Court of Appeals in the Brown case is based upon the fact that Stearns made some claim to the land there in question, but that such fact does not appear in the present suit, nor in the cases decided by the Interior Department, and that the decisions of the Department were right in the first instance, and should not have been overruled because of the decision in the Brown case, which was decided upon a point which is not in the case at bar, and which did not appear in the cases before the Interior Department, viz.: that there was some claim made by Stearns to the land involved in the Brown case, and so that particular land was at the time of the grant *sub judice.*

In other words, the original construction placed by the Interior Department upon the effect of the Reynolds Survey on the grant to the appellant Railroad Company is, as it seems to us, right, and

is the one which this Court is now asked to follow upon the ground that land erroneously included within a grant by an inaccurate survey cannot be deemed to be *sub judice*.

III.

We further press upon the attention of the court that the Reynolds Survey was never approved by the Commissioner of the General Land Office. It was, therefore, ineffective in any way whatever.

The Reynolds Survey after considerable correspondence in regard to the matter on the part of the Commissioner of the General Land Office (Record, pp. 202, 203, 287, 294) was finally rejected by the letter of the acting commissioners of May 13, 1876 (Record, pp. 324, 336).

That the Reynolds Survey was required to be approved by the Commissioner of the General Land Office before becoming effective, is shown by the provision of Section 7 of the Act of July 1, 1864, which enacted that

> "It shall be the duty of the commissioner of the general land office to require a substantial compliance with the directions of this section before approving any survey and plat forwarded to him."

In the case of *S. P. R. R. Co.* vs. *Mackel*, 11 L. D., 491, 493, Secretary Noble said:

> "The land reserved by the Jurupa grant was that included within the boundaries of the claim as confirmed, *i. e.*, within the boundaries shown by the record of the juridical possession. These boundaries were determined on the ground by the survey of 1878 and hence the only land reserved by said private grant was that within that survey. *To render a survey made under the Act of July 1, 1864, effective, it was necessary that it should be approved by the Commissioner of the General Land Office.* The survey of this grant made in 1869, never received the approval of your [Commissioner's] office or of this department and in fact had not, at the date the grant to the railroad company took effect, been approved by the surveyor-general. Such a survey was not effective to except these tracts in controversy from the operation of the latter grant."

Until approval by the commissioner it is difficult to see how the survey could be effective as in any way segregating the land in question from the public land.

SECOND POINT.

For the argument in regard to the other questions in this case, we refer the Court to the brief for the appellant in Case No. 141, to be argued with this case. These questions will not arise, if the Court should agree with the proposition, that the land in question was not *sub judice* at the time of the grant to the Railroad Company in 1871. If the Court should not agree with the argument on this proposition, then we respectfully refer the Court to our brief in Case No. 141 for a discussion of the questions arising out of the confirmation of the title of *bona fide* purchasers of lands erroneously patented by the Railroad Company, and the decree requiring the Railroad Company to pay $1.25 for all lands found to have been sold to such *bona fide* purchasers.

THIRD POINT.

The decree of the court below should be reversed.

MAXWELL EVARTS,
Of Counsel for the Appellants.

[53,928 A]

FILE COPY.

Supreme Court of the United States.

OCTOBER TERM. 1905.

No. 142.

Supreme Court U. S.
FILED
JAN 9 1906
JAMES H. McKENNEY,
Clerk.

The Southern Pacific Railroad Company, and Central Trust Company of New York, D. O. Mills, and Homer S. King as Trustees,

Appellants,

vs.

The United States.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR UNITED STATES.

By JOSEPH H. CALL,
Special Assistant to Attorney General.

Parker & Stone Co., Law Printers, 238 New High St., Los Angeles, Cal.

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Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 142.

The Southern Pacific Railroad Company, Central Trust Company of New York, D. O. Mills, and Homer S. King as Trustees,

Appellants,

vs.

The United States.

Appeal from the United States Circuit Court of Appeals for the Ninth Circuit.

BRIEF FOR UNITED STATES.

Statement.

This bill was filed by the United States against the Southern Pacific Railroad Company, and numerous other defendants, claiming to be *bona fide* purchasers under the railroad for certain lands, and the bill seeks to quiet title and to cancel and annul patents to such lands situated in California, erroneously issued

by the United States to the Southern Pacific Railroad Company, as a part of its grant of March 3, 1871, in so far as such lands had not been sold by said railroad company to *bona fide* purchasers. [R. 5-14.] The bill further seeks an adjudication by the court as to what lands have been sold to *bona fide* purchasers and as to those, prays that the title of such purchasers may be confirmed, and that the government have and recover from the railroad company the ordinary government price for such lands.

Answers were filed by the defendants as follows:

The answer of Southern Pacific Railroad Company, the Central Trust Company of New York, as trustee, D. O. Mills and Homer S. King, as trustees. [R. 82.]

The answer of I. N. Van Nuys. [R. 108.]

The answer of Riverside Vineyard Company. [R. 30.]

The answer of Charles H. Colwell and Russ Avery. [R. 43.]

The answer of J. P. Kyler. [R. 53.]

The answer of Frank Walker. [R. 71.]

The answer of H. S. Button. [R. 42.]

The answer of William H. Davis. [R. 62.]

Decree was entered upon the merits by the Circuit Court in favor of the government, quieting title to lands not patented, vacating patents for lands patented and not sold and for $1.25 per acre for patented lands sold to *bona fide* purchasers and confirming the titles of *bona fide* purchasers of patented lands. [Record 114-121.]

The Circuit Court supported its decree by an opinion [Record 123-124], [reported in 123 Fed. 1007].

The Circuit Court decided the case upon the authority of Southern Pacific Railroad v. Brown, 68 Fed. 333, and United States v. Southern Pacific, 117 F. 544, the former of which was affirmed by the Circuit Court of Appeals, Ninth Circuit, in 75 Fed. 85, which cases involved other tracts of land within the same Mexican grant claimed by the Southern Pacific Railroad, under the same title and maps as the tracts in the present case, and the latter was affirmed in 133 F. 651.

The Southern Pacific Railroad Company, and the trustees in its mortgage bonds, appealed from the decree of the Circuit Court, but the other defendants, claiming to be *bona fide* purchasers whose title were protected by the decree of the Circuit Court, did not join in the appeal. [Record 625, 626.]

The Circuit Court of Appeals affirmed the decree of the Circuit Court in all respects, and filed an opinion [Record 646-661] reported in 133 Fed. 662.

The controlling facts in this case are the following:

On March 3, 1871, Congress made a grant of lands to aid in the construction of the Southern Pacific Railroad from a point near Tehachapa Pass via Los Angeles to the Colorado River, at or near Fort Yuma. [14 U. S. Stats. 292 and 16 U. S. Stats. 573.]

It is a conceded fact alleged in the bill and admitted by the answer [R. 85] and stipulated also [R. 131] that the map showing the line of railroad of the Southern Pacific Railroad Company as definitely located and constructed opposite to the lands described in the bill, was filed in the Interior Department in the year 1874, and it

is conceded that the lands in suit are situate within the granted or place limits of the Southern Pacific grant.

It is also admitted by the pleadings and fully established by the evidence, that in the year 1838 a grant was made by the Mexican government to one Juan Bandini, of the land or rancho called Jurupa. [Record 150-161.[See also defendants' answer. [R. 87.]

This grant was one of specific boundaries, and not a grant of quantity.

The United States Board of Land Commissioners, upon petition of Juan Bandini, confirmed this grant to him under date of October 17, 1854. [Record 159-160.]

Upon appeal to the United States District Court, one Abel Stearns was substituted for Bandini [R. 187] and the District Court affirmed the decree of the Board of Land Commissioners, thereby confirming the grant to Abel Stearns. [Record 163, 165.]

In the year 1872 the Rancho Jurupa confirmed to Abel Stearns as aforesaid, was duly surveyed by the Land Department of the United States, under orders of the Surveyor General for California.

The survey was made by William P. Reynolds, deputy surveyor, and his assistants, and in that year the field notes of the survey, together with a plat thereof, were duly returned to the office of the Surveyor General, and on February 26, 1872, the plat and field notes were formally approved by I. R. Harenburgh, Surveyor General. [For map see Record 356, 357 and field notes Record 168, 177, 359.]

It is an undisputed fact in this case and was so found by both courts below that the lands in suit and described

in the bill, are embraced within the boundaries of the Jurupa Rancho, as surveyed in 1872, and according to the map and field notes approved in that year by the Surveyor General.

Thereafter a dispute arose concerning the true boundaries of the Jurupa Rancho, and in the year 1877, a new survey was ordered [Record 205], which survey was made in the year 1878, excluding these lands, and upon such later survey, patent was issued on May 23, 1879, to Abel Stearns and accepted by him. [For township plats showing both surveys see Record 617 and 620.]

The map of definite location of the Southern Pacific Railroad, opposite to this land, as before stated, was filed in the year 1874 and as it appears that from the year 1872 down to the year 1879, this land was embraced within the boundaries of the Jurupa Rancho as surveyed and approved, it was, under firmly established decisions, *sub judice* in the year 1874, when the grant to the Southern Pacific Railroad took effect, and these lands could not have been operated upon by the grant to that company, which operated only on *public lands* and which expressly reserved and excepted from its operations, all lands reserved, and all lands as to which any adverse *claims* were made at the time of definite location.

Notwithstanding the reservation of these lands and the fact that they were excepted from the Southern Pacific grant, patents of the United States were erroneously issued to numerous tracts embraced within the Jurupa Rancho, according to the approved survey of 1872 as lands inuring to that company under its grant of 1871.

Table of Dates.

The following table of dates, with references to the record, will show that the lands in suit were *sub judice* when the grant of March 3, 1871, to the Southern Pacific Railroad Company attached by filing of the map of definite location in 1874.

(1.) April 5, 1861, the District Court confirmed the Mexican grant known as the Rancho Jurupa. [Record 295.]

(2). February 26, 1872, the United States Surveyor General for California approved the plat and field notes of survey of Rancho Jurupa, embracing the lands in suit, and containing 38,887.42 acres. [Record 356, 357.] The field notes are also contained in the rcord. [Record 168, 177, 359.]

(3). May 13, 1876, upon a contest in the General Land Office, the Commissioner directed the survey of 1872, by Reynolds, to be corrected, upon its western and northern lines. [Record 324-336.]

(4). February 21, 1877, upon appeal to the Secretary of the Interior, the decision of the Commissioner ordering a new survey was affirmed, with some modifications. [Record 205-208.]

(5). February 28, 1877, the Commissioner of the General Land Office directed the Surveyor General to proceed with corrections of the survey of the Jurupa Rancho. [Record 267-271.]

(6). January 28, 1878, the Commissioner of the General Land Office addressed the Secretary ot the Interior, informing him that the Southern Pacific Railroad Company, and other claimants of lands, had entered into a

stipulation to fix certain boundaries of the Rancho Jurupa, and requesting that effect be given to that stipulation. [Record 208-216.]

(7). February 6, 1878, the Secretary of the Interior ordered that the stipulation above mentioned should be carried into effect so as to definitely fix the boundaries in accordance with the stipulation filed by the Southern Pacific Railroad Company and others. [Record 192, 193, 313.]

(8) March 11, 1879, the Secretary of the Interior reconsidered the matter of the survey of Jurupa Rancho, and directed an amended survey to be made. [Record 182-186.]

(9). March 22, 1879, the Commissioner directed the Surveyor General to establish certain points for the boundary lines of the Rancho Jurupa. [Record 181-182.]

(10). April 4, 1879, the amended survey having been made, which excluded from the boundaries of the Jurupa Rancho the lands in suit herein, the Secretary of the Interior ordered a patent to be issued in accordance with such survey. [Record 315.]

(11). May 23, 1879, United States patent was issued to Abel Stearns for the Rancho Jurupa, excluding the lands in suit. [Record 395-417.]

In the cases of Southern Pacific Railroad Company v. Brown and same v. Bray, 75 Federal 85, the Circuit Court of Appeals had under consideration the title to lands situated precisely as the lands in the present suit. Those lands were also claimed by the Southern Pacific as a part of its grant of 1871, and they were embraced within the survey of the Jurupa rancho, approved in

1872 and the court affirmed the decree of the Circuit Court, adjudging that those lands were excepted from the Southern Pacific grant.

That the lands in suit in the present case were *sub judice* in 1874, and were claimed as a part of the Jurupa Rancho, at that time, is conclusively established by the fact that they were surveyed and included in that rancho by the authorities of the United States, and by the affidavits of William P. Reynolds, U. S. Deputy Surveyor, and by five of his assistants, made in 1869, which affidavits are annexed to the field notes [Record 386, 387]; all of said assistants stating under oath

> "We do hereby certify that we assisted William P. Reynolds, U. S. Deputy Surveyor in surveying the boundary lines of the Rancho Jurupa, situated in the county of San Bernardino, in the state of California, and finally confirmed to Abel Stearns, and that said rancho has been in all respects to the best of our knowledge and belief, well and faithfully surveyed, and the boundary monuments established according to the laws of the United States and the instructions of the Surveyor General."

Defendants' Contentions.

Counsel for the Southern Pacific again put forth the old and worn out claim that because the Reynolds' survey was not regular in all respects, and was not followed up to patent and having been finally rejected and a resurvey made excluding the lands in suit, that therefore such survey and acts of the government were insufficient to prevent the passage of the title of these lands to the Southern Pacific Railroad, and they urge in support of

this threadbare argument, numerous grounds or reasons showing the irregularity of the Reynolds survey.

The doctrine of *sub judice* does not and never did rest upon the ground that the claim to the lands was a valid one, but only upon the ground that the lands were adversely claimed reserved or were otherwise *sub judice,* which claim remained undetermined.

This doctrine is one so thoroughly established that it would not be strengthened by the citation of numerous authorities.

Of course if the Reynolds survey approved in 1872 had been regular in all respects, and if there had been no controversy over the boundaries of the Jurupa, this controversy could not have arisen, for these lands would have been patented to Stearns.

It is because there was a controversy over the boundaries of the rancho and because different surveys were made, that the lands were held in reservation, and the lands thereby *sub judice* were excepted from the railroad grant.

The decree of the District Court confirming the Jurupa to Stearns as successor of Bandini, shows that the grant so confirmed was one of specific boundaries, provided that the land within such boundaries be less than 11 square leagues, and if less, then confirmation was only as to the quantity of 11 square leagues. [Record 163, 165.]

The court knows judicially, that a Spanish league is 2.635 English miles in length, and that one square league contains 6.94 square miles, and that 11 square leagues contain 48,857 acres.

The Reynolds survey including the lands in suit, approved in 1872, as stated upon the plat of survey [Record 356], embraced 38,887.42 acres, which is considerably less than 11 square leagues, which contains 48,857 acres.

The grant therefore, of the Jurupa Rancho, according to the Reynolds survey of 1872, which survey embraced more lands than any other survey of that grant, still contained less than 11 square leagues and the grant therefore was clearly one of specific boundaries and not a grant of quantity.

The record shows that as early as 1877, the Southern Pacific Railroad Company, through its attorney, H. S. Brown, was interfering with the survey of the Jurupa Rancho, and attempting to influence the action of the Department. [Record 209.] Also in 1878. [Record 205, 313.]

There is no deficiency in Southern Pacific grant.

Counsel for the Southern Pacific in their brief in the lower court stated:

> "It is stipulated that the Southern Pacific has not received the full quantity of land promised in its grant."

It was not in fact so stipulated, but on the contrary, the stipulation made is as follows:

> "It is further stipulated that within the indemnity limits of the grant to the Southern Pacific Railroad Company made by the Act of Congress of March 3, 1871, and outside of the twenty mile limits, there now remain more than fifty thousand acres of surveyed public lands of the United States for which

there has been no selection or application to select, made by said company." [Record 132, 133.]

It is a very different thing to stipulate that there are 50,000 acres of lands within the Southern Pacific *indemnity limits,* which have never been selected, and to stipulate that the Southern Pacific has not received the quantity of lands promised in its grant. The alleged stipulation referred to by counsel [Record 488], grew out of a question propounded to Jerome Madden, land agent, and a witness for the Southern Pacific, asking him to state how many acres of land there were within the indemnity limits of the Southern Pacific which remained open lands, and his answer was: "I cannot without examination." Thereupon Mr. Call stated as follows: "I will concede that the quantity called for by the preceding question of Mr. Singer, exceeds 10,000 acres."

The facts thus established beyond dispute are, that there is an abundance of land within the limits of the Southern Pacific grant which it never had selected or attempted to select, and there is not a suggestion that there is a shortage in the Southern Pacific grant.

In Oregon Railroad v. United States, 189 U. S. 103, at page 115, the court said:

> "It is also said that all the lands within the indemnity limits were required to supply the deficit in place limits arising from the dispositon prior to definite location by sale and otherwise of lands within the granted limits. *But the extent to which lieu lands could be required to supply such deficit in place lands could not be properly or legally determined until there was an adjustment of the grant of lands in respect to place limits.*"

Points and Authorities.

FIRST.

The right of the defendants to object to the jurisdiction in equity has been waived.

The defendants answered to the merits without objection demurrer or plea to the jurisdiction in equity, and have put the government to the expense of taking of testimony, and the cause has been submitted and tried upon the merits.

Under these circumstances the defendants have waived any right to object to the final determination in this cause, as one in equity, the court having power to grant the relief sought.

Brown v. Lake Superior Co., 134 U. S. 530, 535, 536;

Insley v. United States, 150 U. S. 512, 515, 516;

Perrego v. Dodge, 163 U. S. 160, 164;

Kilbourn v. Sunderland, 130 U. S. 505, 514.

SECOND.

These lands were *sub judice* during the year 1874 when the grant to the Southern Pacific Railroad Company attached by filing map of definite location, and were excluded from that grant, and the patents thereto were invalid.

The principle that lands embraced within the limits of a Mexican or Spanish grant, *sub judice* when the grant takes effect, or which are covered by a subsisting pre-emption or homestead filing, or mineral claim, or other *claims* or rights or otherwise reserved, are ex-

cepted from railroad grants is so thoroughly settled that citation of authority is hardly necessary, but some of the leading cases are the following:

Leavenworth Railroad v. United States, 92 U. S. 733;
Newhall v. Sanger, 92 U. S. 761;
Doolan v. Carr, 125 U. S. 618;
Cameron v. United States, 148 U. S. 301;
Witney v. Taylor, 158 U. S. 85;
Sioux City Railroad v. Griffey, 143 U. S. 32, 41;
Northern Pac. R. R. v. Musser-Sauntry, 168 U. S. 604;
Northern Pas. R. R. v. Sanders, 166 U. S. 620;
Bardon v. Northern Pac. R. R., 145 U. S. 535.

Whenever the law provides for a survey of a Mexican grant by the Commissioner of the General Land Office, or by his inferior officer, the Surveyor General for the District of California, it is presumed when such survey has been made and approved that such survey was made in accordance with law, and it will be binding upon the government, and all others, until reversed or set aside by a higher authority.

McCreery v. Haskell, 119 U. S. 327;
Tubbs v. Wilhoit, 138 U. S. 134.

As before mentioned, the Reynolds survey and field notes thereof were formally approved by the Surveyor General for California in the year 1872, which approval so remained until vacated by the Secretary of the Interior in 1877.

It was adjudged in the McCreery and Tubbs cases

that where a survey had been approved by the Surveyor General, whether under the act of July 23, 1866, or some other act of Congress, that such approved survey was controlling and binding as to lands excluded from the Mexican grant by such survey and disposed of by the government, even though the action of the Surveyor General might thereafter be annulled.

The decisions of the Commissioner of the General Land Office of 1876, and of the Secretary of the Interior, 1878, in evidence herein, show that a controversy had been pending for many years concerning the true boundaries of the Jurupa Rancho, the claimants contending for a much larger area than admitted by adverse interests, and this controversy was not closed until patent was finally issued for the Jurupa Rancho to Stearns, successor of Bandini, on May 23, 1879, long after the grant to the Southern Pacific Railroad Company took effect.

It is contended by counsel for defendants that the doctrine of *sub judice* does not apply to these lands, for the alleged reason that the survey made by the Surveyor General, was commenced and completed before the Rancho Jurupa had been finally confirmed, and this contention is based upon the ground that an appeal was taken from the United States District Court confirming the grant, to the Supreme Court, which court did not issue its mandate until the year *1875*. [Record 507.]

(*a*) If the survey made and approved by the United States Surveyor General had been valid, these lands would have been patented to the claimants of the Jurupa Rancho. The circumstance that another reason has

been discovered by counsel for defendants, why the survey made and approved by the Surveyor General, should have been reversed, and set aside as it was, does not in any wise mitigate against the contention of the government that the lands in suit were reserved and *sub judice* in 1874, for, by the showing made by counsel for defendants, it appears that the final mandate of the Supreme Court was not issued until 1875, while an approved survey by the United States Surveyor General, had stood over these lands since 1872.

The fact that an appeal was taken from the decree of confirmation of the District Court, to the Supreme Court, which was dismissed in 1875, for failure to docket and file the record is urged as a reason why these lands were not reserved or *sub judice* in 1874. [Record 188 and 337.]

As the courts have often observed, it is not the validity of the claim which renders the land *sub judice* and prevents it from passing under a railroad grant, but it is the fact that a claim exists to the land, and that the controversy as to the title was still undetermined.

(*b*) Further, it does not appear that the decree of the United States District Court was *superseded* by the appeal to the Supreme Court. If not superseded the decree of the District Court remained in full force.

(*c*) Moreover, it does not appear that any appeal was ever *perfected* in the Supreme Court, for it does appear from the order of dismissal that it was dismissed for the reason as follows: "It appears that the said appellant has failed to have its cause filed and docketed in conformity to the rules of this court. [R. 189.]

Nothing in any of these proceedings show that the decree of confirmation of the District Court was not in force when the Reynolds survey was made or approved.

However that may be, the survey which was in fact made by the Surveyor General, including therein the lands in suit, shows that a *claim* was made to these lands which was undetermined when the railroad grant took effect in 1874, and further shows that the land was in fact as well as in legal effect *reserved* at that time.

(*d*) Again, it is urged by counsel for defendants, that the survey of the Rancho Jurupa was made under the Act of Congress of 1864, and that no survey under that act could be *completed* until approved by the Commissioner of the General Land Office.

It appears that the plat and field notes of the Reynolds survey of the Jurupa approved by the Surveyor General in 1872, were transmitted to Washington *and placed upon the files of the General Land Office* as the copy of the plat and field notes introduced in evidence in this cause are certified by the Commissioner of the General Land Office, as records being upon file in his office.

Referring to the general authority of the Surveyor General, over lands in this district, the court said in Tubbs v. Wilhoit, 138 U. S. 142, 143:

> "Until April 17, 1879, it had not been the practice of the Land Department to require any specific approved by the Commissioner, either of surveys of the public lands, or plats of townships in accordance therewith, made by the Surveyor General of the state before they were deemed so far final as to sanction sales or selections of the lands surveyed and platted."

And the court quoting from a late decision of Secretary Schurz, said:

> "By the act of Congress, approved May 1, 1796, (1 Stat. 464), 'providing for the sale of the lands of the United States in the territory northwest of the river Ohio and above the mouth of the Kentucky River,' the Surveyor General was authorized to prepare plats of the townships surveyed, to keep one copy of the same in his office for public information, and to send other copies to the 'places of sale,' and to the Secretary of the Treasury. The present local land offices are equivalent to the 'places of sale' mentioned in the act of 1796, and, as a matter of practice, from that date to the present time the township plats prepared by the Surveyor General have been filed by him with the local officers, who thereupon proceeded to dispose of the public lands according to the laws of the United States. There is nothing in the act of 1796, or in the subsequent acts, which requires the approval of the Commissioner of the General Land Office before said survey becomes final and the plats authoritative. Such a theory is not only contrary to the letter and spirit of the various acts providing for the survey of the public lands, but is contrary to the uniform practice of this department. There can be no doubt but that under the act of July 4, 1836, reorganizing the General Land Office, the Commissioner has general supervision over all surveys, and that authority is exercised whenever error or fraud is alleged on the part of the Surveyor General. But when the survey is correct, it becomes final and effective when the plat is filed in the local office by that officer."

But it is in no wise material whether the survey could be finally made and completed until approved by the Commissioner, because the fact that a survey was made by the officers of the United States who were authorized to make surveys shows that a claim was made to this

land by the authority of the United States, as lands which should be and ought to be patented to the claimants of the Mexican grant, and such survey was initiated and carried through for the purpose of setting apart and reserving for the Mexican grant claimant the specific land to which he was entitled.

(*f*) The act of Congress of July 23, 1866, (Vol. 14, p. 218, Sec. 8) controlled the Reynolds survey of 1872, which provides as follows:

> "Sec. 8. That in all cases where a claim to land by virture of a right or title derived from the Spanish or Mexican authorities has been finally confirmed, and a survey and plat thereof shall not have been requested within ten months from the passage of this act, as provided by sections six and seven of the act of July first, eighteen hundred and sixty-four, 'To expedite the settlement of titles to lands in the state of California,' and in all cases where a like claim shall hereafter be finally confirmed, and a survey and plat thereof shall not be requested, as provided by said sections within ten months after the passage of this act, or any final confirmation hereafter made, it shall be the duty of the Surveyor General of the United States for California, as soon as practicable after the expiration of ten months from the passage of this act, or such final confirmation hereafter made, to cause the lines of the public surveys to be extended over such land, and he shall set off, in full satisfaction of such grant, and according to the lines of the public surveys, the quantity of land confirmed in such final decree, and as nearly as can be done in accordance with such decree; and all the land not included in such grant as so set off shall be subject to the general land laws of the United States."

In Durand v. Martin, 120 U. S. 366, 369, the court said:

> "This survey was made in 1869, the claim having been finally confirmed in 1860. As the survey was not made until more than ten months after the act of July 23, 1866, (see 219, 14 Stat. 218), 'to quiet land titles in California,' had become operative, its approval by the Surveyor General had the effect, under the ruling of this court in Frasher against O'Connor, 115 U. S. 102, of opening all lands within the exterior boundaries of the grant, but outside of those fixed by the survey, to selection or pre-emption entry as public lands, subject only to a defeat of title, if in the end the survey as made should be set aside and the boundaries of the grant finally extended so as to include the selection or the entry."

By virtue of the act of 1866, if a survey and plat had not been requested within ten months from the date of the approval of that act, it was the duty of the Surveyor General to complete the survey of the grant, and as the Reynolds survey was not made until more than ten months after the passage of the act of July 23, 1866, and more than ten months after the confirmation of that grant, it was presumptively controlled by the terms of that act, and that survey by its approval would have been final and complete without any approval of any other officer, if it had not been set aside by order of the Secretary of the Interior.

THIRD.

This suit was properly brought and is maintainable in equity to quiet title to lands, to cancel patents to lands, and for the alternative relief in case such lands have passed into the hands of bona fide purchasers for the value of such lands.

(1.) The principal object of this suit is to determine the title to the lands as between the United States and the defendants.

The act of Congress of March 2, 1896, relating to the adjustment of railroad land grants, expressly authorizes any person claiming to be a *bona fide* purchaser from a railroad company of lands erroneously patented to the company and sold by it, to maintain a suit in the United States courts against the United States, to secure a confirmation of his title.

The United States also has a right to maintain a bill in equity to quiet and determine title to lands claimed adversely to the government.

The Statutes of California, Code of Civil Procedure, Section 738, authorizes suits in equity to quiet and determine title to lands.

Pennie v. Hildreth, 81 Cal. 127, 130;
Pierce v. Felter, 53 Cal. 18.

It is well settled that the federal courts will administer such relief in equity where authorized by state statute.

Reynolds v. Crawfordsville, 112 U. S. 405, 412;
Chapman v. Brewer, 114 U. S. 158, 170, 171;

More v. Steinbach, 127 U. S. 70, 84;
Hammer v. Garfield, 130 U. S. 291, 295.

(2) The right of the United States to vacate and annul patents erroneously issued by the Land Department, by bill in equity, is sustained by an unbroken line of authority:

United States v. Stone, 2 Wall. 525, 535;
United States v. Minor, 114 U. S. 233;
Mullan v. United States, 118 U. S. 271;
United States v. Bell &c. Company, 128 U. S. 315, 362;
Colorado &c. Co. v. United States, 123 U. S. 307, 313;
United States v. Southern Pacific R. R., 146 U. S. 570, 619;
Wisconsin Railroad v. United States, 164 U. S. 190, 211.

The jurisdiction in such cases is maintained in equity as arising in fraud, accident or mistake.

Whether the mistake is of law or of fact is of no consequence in cases of this character, for the reason that the officers of the Interior Department, who exercise ministerial powers, cannot bind the United States by their unauthorized acts.

In Mullan v. United States, 118 U. S., at page 278, the court holding that patents erroneously issued could be vacated by a bill in equity, said:

> "It is no doubt true that the actual character of the lands was as well known at the Department of the Interior, as it was anywhere else, and that the Secretary approved the lists, not because he was mistaken about the facts, but because he was of

> opinion that coal lands were not mineral lands within the meaning of the act of 1853, and that they were open to selection by the state, but this does not alter the case. The list was certified without authority of law, and therefore by a mistake against which relief in equity may be afforded."

In Wisconsin Central Railroad v. United States, 164 U. S., at page 209, the court quoted the above extract from the Mullan case, with approval. See also:

Story's Eq. Jur., Sec. 134.

Indeed, in every case which has been brought by the United States to vacate patents to lands which were excepted from the operation of a grant by Congress to a railroad or other person, the suit has been founded and maintained because of error of law in the officers of the Interior Department.

The courts of equity of the United States are as open to the government to recover property wrongfully acquired through fraud, accident, inadvertence, mistake or false suggestion, or the value of such property, as they are to any individual.

Hughes v. United States, 4 Wall. 232, 236;

Moore v. Robbins, 96 U. S. 530;

Williams v. United States, 138 U. S. 514;

Germania Iron Co. v. United States, 165 U. S. 379, 383;

United States v. Bell Telephone Co., 167 U. S. 224, 240.

It is no defense in such suits to show that the defendant might possibly under the discretion of the Secretary

of the Interior have acquired such property rightfully under some other law, or other proceeding.

(2.) The patents to these lands were issued to the Southern Pacific Railroad Company erroneously and under a mistake by the officers of the Interior Department. The railroad company has sold most of them to *bona fide* purchasers, and by reason of the acts of the defendant railroad company the lands cannot be recovered by the United States, but these acts of the defendant do not defeat the power of a court of equity to grant relief, nor do they relieve the defendant from its liability to make restitution to the government.

Alternate Relief.

(3) The bill of complaint prays in the alternative for the government price of the lands in case the lands themselves cannot be recovered by reason of sales to *bona fide* purchasers.

The right of a complainant to plead in the alternative in such cases and the power of the court and its usual practice to grant relief in such cases is well settled.

May v. Le Claire, 11 Wall. 217, 236, 237;
Cook v. Tullis, 18 Wall, 232, 342;
Parkersburg v. Brown, 106 U. S. 487;
Pullman Company v. Central Co., 171 U. S. 138, 146;
Story's Equity Pleading, Secs. 42a, 42b.

FOURTH.

Special jurisdiction in equity has been conferred by Congress upon the Circuit Court to confirm titles of bona fide purchasers and render judgment against the railroad company for value of lands.

The act of Congress of March 2, 1896, [see appendix] specially provides that if the court shall find that lands erroneously patented have been sold to *bona fide* purchasers, and such purchasers are before the court, that it shall confirm the title of the purchasers and render judgment in favor of the government for the value of the land, not exceeding the ordinary government price.

This is a constitutional exercise of power by Congress and creates an additional and new ground of equity which may be administered.

Holland v. Challen, 110 U. S. 15;
Arndt v. Griggs, 134 U. S. 316, 320;
Bardon v. Land Co., 157 U. S. 327, 330;
Cowley v. Railroad Co., 159 U. S. 569; 583;

FIFTH.

This bill is cognizable in equity as one brought to avoid multiplicity of suits.

The numerous parties defendant in this cause might each independently and separately have maintained an action against the United States to determine title to the lands described in the bill and claimed by such defendant. Such a proceeding is authorized by the act of

Congress of March 2, 1896, and but for this bill presenting the entire matter in a single suit, it may fairly be presumed that such numerous independent proceedings would have been brought. This suit in equity is therefore maintainable as one to avoid multiplicity, the defendants all claiming under the same title and source of title.

Pomeroy's Eq. Jur. 251, 256;
Brown v. Guarantee Trust Co., 128 U. S. 403, 410;
Ogden v. Armstrong, 168 U. S. 224;
Smyth v. Ames, 169 U. S. 466;
Hayden v. Thompson (8 C. C. A.), 71 Fed. 60, 67;
Kelley v. Boettcher (8 C. C. A.), 85 Fed. 55, 64;
Ryan v. Seaboard & R. R. Co., 89 Fed. 397, 406;
Barcus v. Gates (4 C. C. A.), 89 Fed. 783, 791;
Bailey v. Tillinghast, (6 C. C. A.) 99 Fed. 801.

It appears, by all the authorities, including the above, that it is not necessary that the defendants should have a common or joint interest in the subject matter of the suit, but they may be joined in a single suit, to avoid multiplicity, when there is a question of fact or of law common to all.

In the present suit the defendants all claim title under the act of Congress of March 3, 1871, and they all claim to be *bona fide* purchasers under similar facts, and under the provisions of the acts of Congress of March 3, 1887, and March 2, 1896.

Not only are the questions of law common to all of the defendants, but the questions of fact are similar in each case; and, moreover, the defendants all claim un-

der the Southern Pacific Railroad Company, a common source of title.

It is, therefore, submitted that this case is cognizable in equity to avoid a multiplicity of suits, if for no other reason, and if upon no other grounds.

SIXTH.

It is a well settled principle in equity that where land or other property has been transferred from one to another wrongfully or under a mistake, that the court will establish and construct a trust in the property, and in its proceeds, in favor of the beneficiary, and against the person wrongfully holding it, and will require the trustees to return the property or its value.

In the present case the lands were excepted from the Southern Pacific grant. The railroad company had no right to them, and that fact was known to the company as a matter of law.

It was not within the *intention* of the United States to convey them to the defendant, and that intent is shown by the granting act.

The defendant is therefore bound *in equity* to reconvey the lands to the United States if still within its power to do so, and if not, then to pay to the United States what it received for them, or the reasonable value of the lands. This duty is required as a matter of jus-

tice, and its enforcement is decreed by an unbroken line of authority:

Perry on Trusts, Sec. 186;
Story's Eq. Jur., Secs. 134, 1255, 1261, 1263;
Pomeroy's Equity Jurisp., Secs. 155, 1044;
May v. Le Claire, 11 Wall. 217, 236;
Cook v. Tullis, 18 Wall. 232, 341, 342;
Angle v. Chicago Rd., 151 U. S. 1, 26, 27;
Townsend v. Vanderwerker, 160 U. S. 171, 179;
New Orleans v. Warner, 175 U. S. 120, 129;
Clews v. Jamieson, 182 U. S. 461, 479.

An implied or constructive trust is deemed by courts of equity to exist when the property of one has been acquired by another by wrong, error, accident or *mistake.*

Taylor v. Benham, 5 How. 233, 274;
Chapman v. Douglas Co., 107 U. S. 357, 358.

In Perry on Trusts, section 186, it is said:

"If a deed is drawn by accident or mistake to embrace property not intended by the parties, equity will construe the grantee to be a trustee, and will execute the trust by reforming the deed, or by ordering a re-conveyance. It would be against natural right to allow a person to hold property which he never intended to buy, and which has come to him by such mistake."

In Pomeroy's Equity Jurisprudence, it is said at Sections 155 and 1044:

"Sec. 155. The second great division of trusts, and the one which in this country especially affords the widest field for the jurisdiction of equity in granting its special remedies so superior to mere recoveries of damages, embraces those which arise

by operation of law from the deeds, wills, contracts, acts or conduct of parties, without any *express* intention, and often without *any* intention, but always without any words of declaration or creation. They are of two species, 'resulting' and 'constructive,' which latter are sometimes called trust *ex maleficio;* and both these species are properly described by the generic term 'implied trusts.' * * *

"If one party obtains the legal title to property not only by fraud or by violation of confidence or of fiduciary relations, but in any other unconscientious manner, so that he cannot equitably retain the property which really belongs to another, equity carries out its theory of a double ownership, equitable and legal, by impressing a constructive trust upon the property in favor of the one who is in good conscience entitled to it, and who is considered in equity as the beneficial owner." * * *

"Section 1044. Constructive trusts include all those instances in which a trust is raised by the doctrines of equity for the purpose of working out justice in the most efficient manner, where there is no intention of the parties to create such a relation and in most cases contrary to the intention of the one holding the legal title and where there is no express or implied written or verbal declaration of the trust. They arise when the legal title to property is obtained by a person in violation, express or implied, of some duty owed to the one who is equitably entitled, and when the property thus obtained is held in hostility to his beneficial rights of ownership. As the trusts of this class are imposed by equity, contrary to the trustee's intention and will, upon property in his hands, they are often termed *trusts in invitum;* and this phrase furnishes a criterion generally accurate and sufficient for determining what trusts are truly constructive.'"

When once the property has been acquired by mistake and under circumstances in which a court of equity for purposes of justice decrees the existence of a trust,

such trust follows the proceeds derived from such property in whatsoever form received.

The beneficiary is not bound by the acts of the trustee, but has an option to recover the property if not transferred, or if sold to *bona fide* purchasers to confirm the sale, and seize upon the proceeds.

Story's Eq. Pl., Sec. 221.

The principle is stated in Story's Equity Jurisprudence, at Section 1262, as follows:

> "In cases of this sort, the *cestui que trust* (the beneficiary) is not at all bound by the act of the other party. He has therefore an option to insist upon taking the property; or he may disclaim any title thereto, and proceed upon any other remedies, to which he is entitled, either *in rem* or *in personam*. The substituted fund is only liable to his option. But he cannot insist upon opposite and repugnant rights. Thus, for example, if a trustee of land has sold the land, in violation of his trust, the beneficiary cannot insist upon having the land, and also the notes given for the purchase money; for, by taking the latter, at least, so far as it respects the purchaser, he must be deemed to affirm the sale. On the other hand, by following his title in the land, he repudiates the sale."

In May v. Le Claire, 11 Wall., at pages 236 and 237, the court said:

> "There are kindred principles in equity jurisprudence whence, indeed, these rules of the common law seem to have been derived. Where a trustee has abused his trust in the same manner the *cestui que trust* has the option to take the original or the substituted property; and if either has passed into the hands of a *bona fide* purchaser without notice, then its value in money. If the trust property comes back into the hands of the trustee, that fact

does not affect the rights of the *cestui que trust.* The cardinal principle is that the wrongdoer shall derive no benefit from his wrong. The entire profits belong to the *cestui que trust,* and equity will so mould and apply the remedy as to give them to him.

* * * * * * * * *

"In this case more than half the residuary devisees of Antoine Le Claire are not before us. We cannot, therefore, decree the conveyance of real estate, but his legal representatives are before us, and we can give a money decree against them, embracing the value of the land, which we might otherwise adjudge to be conveyed."

* * * * * * * * *

"All those securities, including the collaterals, belonged in equity to May from the time they were deposited with Cook & Sargent. Le Claire had no right to change their form or to dispose of them, as was done in carrying out the compromise agreement. It is within the power of this court, in the exercise of its equitable jurisdiction, to annul that arrangement, and hold Davenport and Le Claire's estate liable in all respects as if the compromise had not been made. *But it is also in our power to confirm the transaction, and upon the principles of constructive trusts, to give May its fruits instead of pursuing the effects themselves. This, as the case is presented in the record, we deem the proper course.*"

In Cook v. Tullis, 18 Wall., at page 342, the court said:

"that property acquired by a wrongful appropriation of other property covered by a trust, is itself subject to the same trust. It cannot alter the case that the newly acquired property, instead of being purchased with the proceeds of the original property, is obtained by a direct exchange for it. The real question in both cases is, what has taken the place of the property in its original form?"

In Clews v. Jamieson, 182 U. S., at pages 479, 480, the court said:

> "Pomeroy in his work on Equity Jurisprudence, second edition, instances among other equitable estates and interests which come within the jurisdiction of a court of equity, those of trusts. In volume 1, at section 151, he says: 'The whole system fell within the exclusive jurisdiction of chancery; the doctrine of trusts became and continues to be the most efficient instrument in the hands of a chancellor for maintaining justice, good faith, and good conscience; and it has been extended so as to embrace not only lands, but chattels, funds of every kind, things in action, and moneys.'
>
> "All possible trusts, whether express or implied, are within the jurisdiction of the chancellor. In this case the committee, as trustee, was charged with the performance of some active and substantial duty in respect to the management and payment of the funds in its hands, and it was its duty to see that the objects of its creation were properly accomplished. The fact that the relief demanded is a recovery of money only, is not important in deciding the question as to the jurisdiction of equity. The remedies which such a court may give depend upon the nature and object of the trust; sometimes they are specific in their character, and of a kind which the law courts cannot administer, but often they are of the same general kind as those obtained in legal actions, being mere recoveries of money. A court of equity will always, by its decree, declare the rights, interest or estate of the *cestui que trust*, and will compel the trustee to do all the specific acts required of him by the terms of the trust. *It often happens that the final relief to be obtained by the cestui que trust consists in the recovery of money. This remedy the courts of equity will always decree when necessary, whether it is confined to the payment of a single specific sum, or involves an accounting by the trustee for all that he has done in pursuance of the trust, and*

a distribution of the trust moneys among all the beneficiaries who are entitled to share therein.' I Pom. Eq. Jur. sec. 158."

SEVENTH.

The principle is well settled that where a court of equity takes jurisdiction of a cause upon one ground, pertaining either to its exclusive or concurrent jurisdiction, that it will retain it to do complete justice, even to granting legal remedies.

United States v. Union Pacific Railroad Co., 160 U. S. 1, at page 52;
Ober v. Gallagher, 93 U. S. 199;
Root v. Railway, 105 U. S. 189, 205, 208;
Ward v. Todd, 103 U. S. 327;
Hopkins v. Grimshaw, 165 U. S. 342, at page 358;
Smyth v. Ames, 169 U. S. 466, 516, 517;

EIGHTH.

(1) By the authority reserved in Congress to alter, amend or repeal the act of July 27, 1866, Sec. 20 (see appendix) the United States may pass any supplemental law, the object of which is to carry out the national purposes disclosed by the act of 1866, the purposes of which mainly were to secure to the United States the use of the road, and to adjust the grant to the railroad company awarding to it what it is entitled to, and to the government that which is reserved.

United States v. Union Pacific Railroad, 160 U. S. 1, 32, 33;
Shields v. Ohio, 95 U. S. 319;

Wisconsin Railroad v. United States, 164 U. S. 190, 205;

United States v. Oregon Rd., 176 U. S. 47, 48.

The confirmatory act of March 2, 1896, requiring the railroad company to repay to the United States the government price of the lands, was passed in the interests of the railroad company, and has been fully accepted and adopted by the company, and the company is now estopped from denying its liability.

It cannot be doubted but that the act of March 2, 1896, was for the benefit of the Southern Pacific Company. This is apparent from the fact, as shown by Exhibit "A" to defendant's answer, that the lands were sold at a price largely in excess of the government value. [Record 98-104.]

The answer alleges that the lands were so sold to *bona fide* purchasers. [Record 96, 97.[It is, therefore, obvious that the confirmation of the title alone will relieve the railroad company from the obligation to repay the purchase price, by reason of failure of title.

It is well settled that where an act is passed which is for the benefit of, or in the interest of a corporation or person, it will be presumed that the act was passed at the request of such corporation, and that the company has accepted its provisions.

In taking the benefits of the act, the company, of course, is charged with its burdens.

Daniels v. Tearney, 102 U. S. 415, 421;

Grand Rapids Rd. v. Osborn, 193 U. S. 17, 29.

In this case we are not, however, required to rely upon the legal presumption of acceptance, if that were necessary, but we have evidence in the record that the company did in fact accept the provisions of this act and claim its benefits.

The answer of the Southern Pacific Railroad Company and the trustees in its mortgage bonds, in the present case, relies upon and seeks to take the benefits of the act of March 2, 1896. The answer alleges [Record 96]:

> "That prior to *March 2, 1896,* the defendant Southern Pacific Railroad Company duly issued, sold and delivered negotiable bonds secured by this last mentioned mortgage or deed of trust of the face value of more than $10,000,000 to *bona fide* purchasers thereof, who purchased the same in good faith, without notice of any claim or demand of the United States to or respecting any of the said lands, and each and all of said purchasers paid full value for the said lands, and were and are *bona fide* purchasers of the same."

The answer also contains further allegations showing that it had placed the lands beyond the reach of the court —facts which cause the act of 1896 to operate. [R. 96.]

NINTH.

The contention of appellants that the holders of its bonds alleged to be secured upon the lands in suit, are bona fide purchasers, is without merit.

(*a*) The alleged mortgages do not embrace these lands, but by their terms cover only *lands granted to the Southern Pacific Railroad Company by the acts of Congress of 1871* and *1866* [R. 516, 517, 583] and these lands were not so granted.

(*b*) The adjustment act of 1887 protecting titles of *bone fide* purchasers [see 24 U. S. Stats. 556, Sec. 4], provides as follows:

> "That a mortgage or pledge of said lands by the company shall not be deemed as a sale for the purpose of this act." [See appendix.]

It has been determined in former litigations, with the Southern Pacific Railroad Company, that the aforesaid adjustment acts do not protect bondholders under the mortgages or deeds of trust set up in the answer of that company in the present suit.

United States v. Southern Pacific, 146 U. S. 570, 619.

Southern Pacific Railroad v. United States, 168 U. S. 1, 66;

Southern Pacific Railroad v. United States, 183 U. S. 519; and

Southern Pacific Railroad v. United States, 189 U. S. 447.

In all these cases the trustees of the mortgage bonds of the Southern Pacific Railroad Company were parties defendant and in all of them rights were asserted as *bona fide* purchasers of the lands in suit, by virtue of the mortgages or deeds of trust and in all of them that contention was denied.

TENTH.

The present case is distinguished from United States vs. Winona Railroad, 165 U. S., 481.

Counsel for appellants in the lower courts strongly relied upon the case of the United States v. Winona Railroad to defeat the recovery by the United States of the government price of these lands.

That case was not brought to recover the government price, as the court states in the opinion, but counsel relied upon the following paragraph in the opinion [165 U. S. 482]:

> "If it be suggested that under the scope of these acts, though the suit must fail so far as it is one to set aside and cancel the certification, it may yet be maintained against the defendant railroad company for the value of the lands so erroneously certified, and that the decree should be modified to this extent, it is sufficient to say that, first, the government has not asked any such decree; second, that it may be doubtful whether for the mere purpose of recovering money an action at law must not be the remedy pursued; but lastly, and chiefly, that it does not appear from this record either that the railroad company received an excess of lands or has even received (these lands included) the full quantity of

> lands promised in the grant; and further, that it does not appear that there were not within the granted or indemnity limits, lands which the company might have rightfully received but for this erroneous certification."

The present case is different from the Winona case in the following controlling features:

(1) In the present case Congress reserved the right to amend the Southern Pacific grants of July 27, 1866 and March 3, 1871, (see section 20, act of 1866, appendix hereto), and in pursuance of such authority Congress passed the supplemental acts of March 3, 1887, and March 2, 1896, declaring in effect that the Southern Pacific Company should repay to the United States the government price of all lands erroneously patented under those grants.

These acts create an express obligation on the part of the Southern Pacific to repay the government price as to such lands erroneously patented and sold to *bona fide* purchasers, whereas no such condition appears to have existed in the Winona case.

(2) In the present case the Southern Pacific has sold all, or nearly all, of these lands for a price largely in excess of $1.25 an acre, being the minimum government price and has received the benefits from such sales.

The answers in the present case, and in former litigations, referred to in this brief, show that the Southern Pacific has received very large benefits from the passage of the acts of 1887 and 1896, and having so accepted the benefits, it is bound by the obligations imposed by those acts, to repay to the government the price of $1.25

per acre. These conditions did not exist in the Winona case.

(3) It seems to have been assumed in the Winona case that if the Winona Railroad was required to repay to the United States the government price of those lands, it would meet with an irreparable loss by reason of the alleged fact that the Winona Railroad was entitled to select indemnity for those lands, and that the indemnity lands had been exhausted, so that no such indemnity selection could be made, and that therefore the government should not be allowed to deprive the Winona Railroad of the money value of such lands where it had by its own acts prevented the Winona Railroad from selecting indemnity.

Instead of there being a deficiency in the grant to the Southern Pacific, there is a large excess of lands to supply losses in the Southern Pacific grant, as appears from the following stipulation of fact:

> "It is further stipulated that within the indemnity limits of the grant to the Southern Pacific Railroad Company made by the Act of Congress of March 3, 1871, and outside of the twenty mile limits, there now remain more than fifty thousand acres of surveyed public lands of the United States for which there has been no selection or application to select, made by said company." [Record 132.]

This stipulation of fact disposes of the contention made by the railroad company that there are no other lands to select as indemnity for the lands described in the bill.

(4) This suit is brought by the United States in pursuance of said acts of 1887 and 1896, requiring the Sec-

retary of the Interior to adjust the several railroad land grants [see appendix], and the Southern Pacific grant has not yet been finally adjusted, so that it cannot be definitely ascertained what amount of lands it has lost, for which it might be entitled to make indemnity selections, nor what amount of indemnity lands remain.

It was decided in Oregon Railroad v. United States [189 U. S. 103, 115] that until there had been a final adjustment of the land grant it was not competent to show by other evidence that there was any deficiency in the grant.

The Southern Pacific, therefore, is in no position to say at this time that there is a deficiency, and for all these reasons the decrees of the courts below should be affirmed.

Respectfully submitted,

JOSEPH H. CALL,

Special Assistant to Attorney General.

APPENDIX.

ACTS OF CONGRESS.

ATLANTIC AND PACIFIC GRANT

July 27, 1866 (14 Stat., 292).

AN ACT Granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast.

Section 1 incorporated the Atlantic and Pacific Railroad Company and provided for the construction and location of a line of railroad, as follows:

"Beginning at or near the town of Springfield, in the State of Missouri, thence to the western boundary line of said State, and thence by the most eligible railroad route, as shall be determined by said company, to a point on the Canadian river; thence to the town of Albuquerque, on the River Del Norte, and thence by way of Aqua Frio, or other suitable pass, to the headwaters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude as near as may be found most suitable for a railway route to the Colorado river, at such point as may be selected by said company for crossing; thence by the most practicable and eligible route to the Pacific."

Section 2 grants a right of way, etc.

"SEC. 3. *And be it further enacted,* That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe

and speedy transportation of the mails, troops, munitions of war, and public stores over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State; and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office, and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: *Provided,* That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: *Provided further,* That the railroad company receiving the previous grant of land may assign their interest to said 'Atlantic and

Pacific Railroad Company,' or may consolidate, confederate, and associate with said company upon the terms named in the first and seventeenth sections of this act: *Provided further*, That all mineral lands be, and the same are hereby, excluded from the operations of this act; and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided: *And provided further*, That the word 'mineral,' when it occurs in this act, shall not be held to include iron or coal: *And provided further*, That no money shall be drawn from the Treasury of the United States to aid in the construction of the said 'Atlantic and Pacific Railroad.'"

"SEC. 6. *And be it further enacted*, That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road, after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry or pre-emption before or after they are surveyed except by said company as provided in this act; but the provisions of the act of September, 1841, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled, 'An act to secure homesteads to actual settlers on the public domain,' approved May 20, 1862, shall be, and the same are, hereby extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company."

"SEC. 8. *And be it further enacted,* That each and every grant, right, and privilege herein, are so made and given to and accepted by said Atlantic and Pacific Railroad Company upon and subject to the following conditions, namely: That the said company shall commence the work on said road within two years from the approval of this act by the President, and shall complete not less than fifty miles per year after the second year, and shall construct, equip, furnish, and complete the main line of the whole road by the fourth day of July, Anno Domini eighteen hundred seventy-eight."

"SEC. 11. *And be it further enacted,* That said Atlantic and Pacific Railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval and all other Government service, and also subject to such regulations as Congress may impose restricting the charges for such Government transportation."

"SEC. 18. *And be it further enacted,* That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco; and shall have a uniform gauge and rate of freight or fare with said road, and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided; and shall be required to construct its road on the like regu-

lations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for."

"SEC. 20. *And be it further enacted,* That the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times, but particularly in time of war, the use and benefits of the same for postal, military, and other purposes, Congress may, at any time, having due regard for the rights of said Atlantic and Pacific Railroad Company, add to, alter, amend, or repeal this act."

TEXAS PACIFIC AND SOUTHERN PACIFIC ACT.

March 3, 1871 (16 Stat. L., 573, 579).

"AN ACT To incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes."

Sections 1 to 22 of this act incorporated and made a grant of lands to the Texas Pacific Railroad Company.

Section 23 provided as follows:

"That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July twenty-seven, eighteen hundred and sixty-six: *Provided, however,* That this section shall

in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company."

ACT OF CONGRESS OF MARCH 3, 1887.

(24 Stats. 556.)

AN ACT to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and for other purposes.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,* That the Secretary of the Interior be, and is hereby, authorized and directed to immediately adjust, in accordance with the decisions of the Supreme Court, each of the railroad grants made by Congress to aid in the construction of railroads and heretofore unadjusted.

SEC. 2. That if it shall appear, upon the completion of such adjustments respectfully, or sooner, that lands have been, from any cause, heretofore erroneously certified or patented by the United States, to or for the use or benefit of any company claiming by, through or under grant from the United States, to aid in the construction of a railroad, it shall be the duty of the Secretary of the Interior to thereupon demand from such company a relinquishment or re-conveyance to the United States of all such lands, whether within granted or indemnity limits; and if such company shall neglect or fail to so re-convey such lands to the United States within ninety days after the aforesaid demand shall have been made, it shall thereupon be the duty of the Attorney-General to commence and prosecute in the proper courts the

necessary proceedings to cancel all patents, certification, or other evidence of title heretofore issued for such lands, and to restore the title thereof to the United States.

SEC. 3. That if, in the adjustment of said grants, it shall appear that the homestead of pre-emption entry of any *bone fide* settler has been erroneously cancelled on account of any railroad grant or the withdrawal of public lands from market, such settler upon application shall be reinstated in all his rights and allowed to perfect his entry by complying with the public land laws: *Provided,* That he has not located another claim or made an entry in lieu of the one so erroneously canceled: *And provided also,* That he did not voluntarily abandon said original entry. *And provided further,* That if any of said settlers do not renew their application to be reinstated within a reasonable time, to be fixed by the Secretary of the Interior, then all such unclaimed lands shall be disposed of under the public land laws, with priority of right given to bona fide purchasers of said unclaimed lands, if any, and if there be no such purchasers, then to bona fide settlers residing thereon.

SEC. 4. That as to all lands, except those mentioned in the foregoing section, which have been so erroneously certified or patented as aforesaid, and which have been sold by the grantee company to citizens of the United States, or to persons who have declared their intention to become such citizens, the person or persons so purchasing in good faith, his heirs or assigns, shall be entitled to the land so purchased upon making proof of the fact of such purchase at the proper land office,

within such time and under such rules as may be prescribed by the Secretary of the Interior, after the grants, respectively, shall have been adjusted; and patents of the United States shall issue therefor, and shall relate back to the date of the original certification of patenting, and the Secretary of the Interior, on behalf of the United States, shall demand payment from the company which has so disposed of such lands of an amount equal to the Government price of similar lands; and in case of neglect or refusal of such company to make payment as hereafter specified, within ninety days after the demand shall have been made, the Attorney-General shall cause suit or suits to be brought against such company for the said amount: *Provided,* That nothing in this act shall prevent any purchaser of lands erroneously withdrawn, certified or patented as aforesaid from recovering the purchase money therefor from the grantee company, less the amount paid to the United States by such company as by this act required: *And provided,* That a mortgage or pledge of said lands by the company shall not be considered as a sale for the purpose of this act, nor shall this act be construed as a declaration of forfeiture of any portion of any land grant for conditions broken, or as authorizing an entry for the same, or as a waiver of any rights that the United States may have on account of any breach of said conditions.

SEC. 5. That where any said company shall have sold to citizens of the United States, or to persons who have declared their intention to become such citizens, as a part of its grant, lands not conveyed to or for the use of such company, said lands being the numbered sections pre-

scribed in the grant, and being coterminous with the constructed parts of said road, and where the lands so sold are for any reason excepted from the operation of the grant to said company, it shall be lawful for the bona fide purchaser thereof from said company to make payment to the United States for said lands at the ordinary Government price for like lands, and thereupon patents shall issue therefor to the said bona fide purchaser, his heirs or assigns: *Provided*, That all lands shall be excepted from the provisions of this section which at the date of such sales were in the bona fide occupation of adverse claimants under the pre-emption or homestead laws of the United States, and whose claims and occupation have not since been voluntarily abandoned, as to which excepted lands the said pre-emption and homestead claimants shall be permitted to perfect their proofs and entries and receive patents therefor: *Provided further*, That this section shall not apply to lands settled upon subsequent to the first day of December, eighteen hundred and eighty-two, by persons claiming to enter the same under the settlement laws of the United States, as to which lands the parties claiming the same as aforesaid shall be entitled to prove up and enter as in other like cases.

SEC. 7. That no more lands shall be certified or conveyed to any State or to any corporation or individual, for the benefit of either of the companies herein mentioned, where it shall appear to the Secretary of the Interior that such transfers may create an excess over the

quantity of lands to which such State, corporation, or individual would be rightfully entitled."

Approved, March 3, 1887. [24 Stat. 556.]

ACT OF CONGRESS, FEBRUARY 12, 1896.

(29 Stat. 6.)

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,* That section four of an act entitled 'An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes,' approved March third, eighteen hundred and eighty-seven, be, and the same is hereby, amended by adding thereto the following proviso: "*Provided further,* That where such purchasers, their heirs or assigns, have paid only a portion of the purchase price to the company, which is less than the Government price of similar lands, they shall be required, before the delivery of patent for their lands, to pay to the Government a sum equal to the difference between the portion of the purchase price so paid and the Government price, and in such case the amount demanded from the company shall be the amount paid to it by such purchaser.' "

ACT OF CONGRESS OF MARCH 2, 1896.

(29 Stat. 42.)

"*Be it enacted, &c.,* That suits by the United States to vacate and annul any patent to lands heretofore erroneously issued under a railroad or wagon road grant shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereaf-

ter issued shall only be brought within six years after the date of the issuance of such patents, and the limitation of section eight of chapter five hundred and sixty-one of the acts of the second session of the Fifty-first Congress, and amendments thereto, is extended accordingly as to the patents herein referred to. But no patent to any lands held by a bona fide purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed: *Provided,* That no suit shall be brought or maintained, nor shall recovery be had for lands or the value thereof, that were certified or patented in lieu of other lands covered by a grant which were lost or relinquished by the grantee in consequence of the failure of the Government or its officers to withdraw the same from sale or entry.

SEC. 2. That if any person claiming to be a *bona fide* purchaser of any lands erroneously patented or certified shall present his claim to the Secretary of the Interior prior to the institution of a suit to cancel a patent or certification, and if it shall appear that he is a bona fide purchaser, the Secretary of the Interior shall request that suit be brought in such case against the patentee, or the corporation, company, person, or association of persons, for whose benefit the certification was made, for the value of said land, which in no case shall be more than the minimum Government price thereof, and the title of such claimant shall stand confirmed. An adverse decision by the Secretary of the Interior on the bona fides of such claimant shall not be conclusive of his rights, and if such claimant, or one claiming to be a bona fide purchaser, but who has not submitted his claim

to the Secretary of the Interior, is made a party to such suit, and if found by the court to be a bona fide purchaser, the court shall decree a confirmation of the title, and shall render a decree in behalf of the United States against the patentee, corporation, company, person, or association of persons, for whose benefit the certification was made for the value of the land as hereinbefore provided. Any bona fide purchaser of lands patented or certified to a railroad company, and who is not made a party to such suit, and who has not submitted his claim to the Secretary of the Interior, may establish his right as such bona fide purchaser in any United States court having jurisdiction of the subject-matter, or at his option as prescribed in sections three and four of chapter three hundred and seventy-six of the acts of the second session of the Forty-ninth Congress.

SEC. 3. That if at any time prior to the institution of suit by the Attorney-General to cancel any patent or certification of lands erroneously patented or certified, a claim or statement is presented to the Secretary of the Interior by or on behalf of any person or persons, corporation or corporations, claiming that such person or persons, corporation or corporations, is a bona fide purchaser or are *bona fide* purchasers of any patented or certified land by deed or contract, or otherwise, from or through the original patentee or corporation to which patent or certification was issued, no suit or action shall be brought to cancel or annul the patent or certification for said land until such claim is investigated in said Department of the Interior; and if it shall appear that such person or corporation is a bona fide purchaser as afore-

said, or that such persons or corporations are such bona fide purchasers, then no suit shall be instituted, and the title of such claimant or claimants shall stand confirmed; but the Secretary of the Interior shall request that suit be brought in such case against the patentee, or the corporation, company, person, or association of persons for whose benefit the patent was issued or certification was made for the value of the land, as hereinbefore specified.

Supreme Court of the United States.

No 142.—October Term, 1905.

The Southern Pacific Railroad Company, and Central Trust Company of New York, D. O. Mills and Homer S. King, as Trustees, Appellants,
vs.
The United States.

Appeal from the United States Circuit Court of Appeals for the Ninth Circuit.

[February 19, 1906.]

This case, in which on February 28, 1901, the United States filed its bill in the Circuit Court for the Southern District of California, resembles the one immediately preceding, in that it was a suit to cancel certain patents erroneously issued to the Southern Pacific Railroad Company, and to quiet the title of the Government to the lands mentioned therein; to confirm the title of certain other lands erroneously patented to the company and by it conveyed to *bona fide* purchasers; and to obtain an accounting and recovery from the company of the value of the lands so conveyed to *bona fide* purchasers. By the decree the full relief asked, cancellation, confirmation and recovery was granted. The question presented is different in that the railroad company denies that the patents were erroneously issued. The lands were within the place limits of the railroad company's grant, but the plaintiff contends that they were excluded from the grant because within the claimed and undetermined limits of a Mexican land grant.

In 1838 one Juan Bandini received from the Mexican government a grant of what is termed the Jurupa Ranch. After California was acquired under the treaty of Guadalupe Hidalgo, and on September 25, 1852, Bandini presented his petition to the commissioners appointed under the act of Congress of March 3, 1851, (9 U. S. Stat. 631,) asking confirmation of his title, and on October 17, 1854, it was confirmed, the order of confirmation describing the boundaries of the rancho in substantially the language of the act of juridical possession.

An appeal was taken to the District Court of the United States for the Southern District of California, as authorized by the statute, which court, on April 5, 1861, sustained the action of the commissioners. The boundaries of the grant were thus described:

"The said boundaries being as follows: Commencing at the foot of a small hill, standing alone, at the cañada which the Messrs. Yorba recognize as their boundary, on the further side of the river of Jurupa, which hill the Indians in their tongue call 'Pachappa,' which was taken for a landmark, placing on it certain stones on top of others; thence course westerly along the bank of the said river thirty thousand varas to the point of the same table land on which Mr. Bandini had established his house; and where the said river makes a bend, where a stake was driven for a landmark; thence northerly, fronting towards the mountains of Cucamonga, seven thousand varas, passing between the two springs of Güspar, ending at the first white sand bank which there is on said course towards Cucamonga; thence easterly the same thirty thousand varas to a small lone mountain on the left hand of the high road going from San Gabriel to San Bernardino, called by the Indians 'Catalmacay,' and which was designated as a landmark; thence southerly seven thousand varas to the point of beginning at the foot of the small hill called 'Pachappa,' which makes a corner east, west."

The confirmation was made in the name of Abel Stearns, a purchaser pending the proceedings, and substituted of record for the original petitioner. On January 14, 1869, the surveyor general of California, on application of the claimant and deposit by him of the estimated cost thereof, directed a survey of the rancho. This was made, and on February 26, 1872, the survey and field notes were filed in the office of the surveyor general of California and by him approved. On May 13, 1876, the Commissioner of the General Land Office at Washington directed a correction of some alleged errors in this survey. On appeal from this order the Secretary of the Interior, on February 21, 1877, ordered a resurvey. This was made, and on May 23, 1879, a patent was issued conforming to such resurvey. The lands in dispute are within the limits of the first but outside those of the second survey, and are not included in the patent.

On May 1, 1862, an appeal to this court was prayed and allowed in the District Court of California. On January 8, 1875, an order was here entered which, after stating that an appeal had been allowed by the District Court, as shown by an inspection of the certificate of the clerk of that court, recites:

"And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and seventy-four, the said cause came on to be heard before the said Supreme Court, and it appearing that the said appellant has failed to have its cause filed and docketed in conformity to the rules of this court, it is now here ordered, adjudged and decreed by this court that this appeal from the District Court of the United States for the District of California be, and the same is hereby, docketed and dismissed."

Upon these facts a decree in favor of the plaintiff was entered by the Circuit Court, June 15, 1903, (123 Fed. Rep. 1007,) which was affirmed

by the Circuit Court of Appeals on October 17, 1904, (133 Fed. Rep. 662,) and thereupon this appeal was taken.

Mr. Justice BREWER delivered the opinion of the Court.

The single question is whether these lands were between the dates of the two surveys *sub judice*, and therefore not passing under the grant to the railroad company. The map of definite location was filed and approved in 1874, and at that time, which was between the dates of the two surveys, the grant took effect. The description of the lands in the grant and in the decree of confirmation was not in the language of the United States land legislation by section, township and range, nor was it such that without a survey the exact boundaries could be determined. No one could say from reading this description whether the true north boundary was shown by the first or the second survey. The regular land surveys made by the Government establishing section, township and range lines would not locate the boundaries of the grant nor would they identify either of those lines with any particular boundary. There was that generality of description which required a special survey to locate the grant. It is said that the patentee never claimed the land north of the boundary line established by the second survey, and therefore that it was in no just sense *sub judice*. But the boundaries being uncertain he applied to the department authorized by Congress to determine them. It acted upon his application and by its survey located the boundaries. He made no challenge of its action, but so far as the record shows was content therewith. While a new survey was subsequently ordered, it was not at his instance. So, at least until the first survey was set aside, it was the measure of his claim and the lands within the boundaries established by it were *sub judice*. No affirmative declaration that he insisted upon his right to them was essential to make them a part of his claim.

But the special contention of the appellants is that the first survey was without any authority of law, because the statute provides that upon final confirmation of the claim a survey may be ordered, and it is insisted that there was no final confirmation until the order made by this court in 1875; that although the confirmation by the District Court was in 1861, yet yet an appeal was allowed which transferred the case to this court and held the question of confirmation in abeyance until the order here made in 1875. The statute (sec. 13) provides:

" . . . and for all claims finally confirmed by the said commissioners, or by the said District or Supreme Court, a patent shall issue to the claimant upon his presenting to the General Land Office an authentic certificate of such confirmation, and a plat of survey of the said land, duly

certified and approved by the surveyor general of California, whose duty it shall be to cause all private claims which shall be finally confirmed to be accurately surveyed, and to furnish plats of the same."

Hence it is contended that the entire proceedings under the first survey were void and may be put out of consideration in determining whether the lands were *sub judice*. But this ignores the fact that anterior to the first survey the United States had practically abandoned its appeal from the order of the District Court. It had for ten years failed to file any transcript in this court and the petitioner had been entitled to the formal entry of docket and dismissal which he obtained in 1875, an entry implying an abandoned appeal and made to place that fact upon record. The Government, which was the party interested against the petitioner, and the party taking the appeal, did not, when the application was made in 1869 to the surveyor general of California, question the right to a survey. It did not suggest that there had been no final order of confirmation nor has it at any time raised any question of the right to that survey, and the Land Department ordered the second only upon a doubt of the accuracy of the first. It does not lie within the mouth of a third party to say that the Government had a right to appeal, could have insisted on that right, and could have objected to the first survey on the ground of a failure to obtain a final order of confirmation. It is enough that the Government recognized that it had abandoned its appeal, and was willing that proceedings should be taken looking to survey and patent. Nor were the proceedings so absolutely void that it can be said that no claim was pending. The surveyor general was the official of the Government placed in charge of surveys, who on application was to determine whether the conditions had arisen which justified him in acting. If he decided erroneously his action could be set aside on review, but it was not a nullity. Even between individuals, if one brings a suit in a Federal court to quiet his title to a tract of land and obtains a decree in accordance with his bill, and on appeal this court sets aside the decree and orders the suit to be dismissed for lack of proper allegations in respect to diverse citizenship, while it may be that the proceedings are ineffectual to determine the title, yet can it be said that no suit was pending, no claim was made? Put the question in another aspect; suppose no challenge of the first survey had been made and the Land Department, acting on that survey, had caused a patent to be issued, could the Government obtain a decree setting it aside upon that showing alone and without a disclosure of equities? In *Williams* v. *United States*, 138 U. S. 514, and *Germania Iron Company* v. *United States*, 165 U. S. 379, something more than premature action in certificate and patent was shown—something which presented an equity entitling the United States to maintain its suit for cancellation.

Another matter; at the time the map of definite location was filed and approved, this first survey had been made and approved by the surveyor general of California, and by that survey the lands in dispute were included within the Mexican grant. The railroad company, therefore, took title to its land grant with this fact apparent on the records of the Land Department. In an early case in this court, *Kansas Pacific Railway Company* v. *Dunmeyer*, 113 U. S. 629, in which the question of the relative rights of railroads to granted lands and individuals claiming rights to separate tracts within the place limits, was presented, we said (p. 641):

"It is not conceivable that Congress intended to place these parties as contestants for the land, with the right in each to require proof from the other of complete performance of its obligation. Least of all is it to be supposed that it was intended to raise up, in antagonism to all the actual settlers on the soil whom it had invited to its occupation, this great corporation, with an interest to defeat their claims, and to come between them and the Government as to the performance of their obligations.

"The reasonable purpose of the Government undoubtedly is that which is expressed, namely, while we are giving liberally to the railroad company, we do not give any lands we have already sold, or to which, according to our laws, we have permitted a pre-emption or homestead right to attach. No right to such land passed by this grant."

And this proposition has been repeatedly reaffirmed in later cases. *Hastings & Dakota Railroad Company* v. *Whitney*, 132 U. S. 357; *Sioux City etc. Land Company* v. *Griffey*, 143 U. S. 32; *Whitney* v. *Taylor*, 158 U. S. 85.

One thing more, it appears from a stipulation of counsel that within the indemnity limits of the grant to the Southern Pacific Railroad there remain more than fifty thousand acres of surveyed public lands for which there has been no selection or application to select by the company. So that there is no such equity in favor of the company as was suggested in the case of *United States* v. *Winona etc. Railroad Company*, 165 U. S. 463, 482.

The decree of the Court of Appeals is *Affirmed.*

True copy.

Test:

Clerk Supreme Court, U. S.